TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. 185.

THE STEAMBOAT CITY OF HARTFORD, HER TACKLE, ETC.—THE HARTFORD AND NEW YORK STEAMBOAT COMPANY, CLAIMANTS, APPELLANTS,

vs.

HUDSON S. RIDEOUT ET AL.

No. 186.

THE STEAMBOAT CITY OF HARTFORD, HER TACKLE, ETC.—THE HARTFORD AND NEW YORK STEAMBOAT COMPANY, CLAIMANTS, APPELLANTS,

vs.

CHARLES ROBINSON.

FILED OCTOBER 11, 1875.

No. 212.

CHARLES ROBINSON, APPELLANT,

vs.

THE HARTFORD AND NEW YORK STEAMBOAT COMPANY, CLAIMANTS OF THE STEAMBOAT CITY OF HARTFORD.

FILED OCTOBER 14, 1875.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

SUPREME COURT OF THE UNITED STATES.

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½ United States district court, southern district of New York.

HUDSON S. RIDEOUT ET AL.
against
THE STEAMBOAT CITY OF HARTFORD AND THE Steam-tug Unit, their tackle, &c.

CHARLES ROBINSON
against
THE STEAMBOAT CITY OF HARTFORD AND THE Steam-tug Unit, their tackle, &c.

Filed Nov. 15th, 1872.

1 To the honorable Samuel Blatchford, district judge for the southern district of New York:

The libel and complaint of Hudson S. Rideout, of Bucksport, Joab W. Palmer, George Bowen, Aaron Babb, Lysander S. Strickland, and William H. Strickland & Co., of Bangor, Benjamin Johnson, of Hampden, James M. Neally, Selath Walton, Charles M. Doane, and Joseph Oakes, of Brewer, and William Atwood, of Bucksport, all in the State of Maine, against the steamboat City of Hartford, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest therein, and the steam-tug Unit, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, respectfully shows:

First. That the said steamboat City of Hartford and the said steam-tug Unit are, and each of them now is, in this district.

Second. That at the several times hereinafter stated your libel-
2 lants, except the libellant William Atwood, were the owners of a certain schooner called the Abbie S. Oakes, her tackel, apparel, and furniture, and all your libellants were owners of the freight earned by the said schooner, and the libellants, Hudson S. Rideout and William Atwood, were owners of certain supplies, clothing, charts, and other property on board the said schooner at the several times hereinafter stated.

Third. That the said schooner was, at the said several times, tight, staunch, and strong, well and sufficiently tackled, appareled, and furnished for the business and employment in which she was then engaged, and that at the said time she was engaged on a voyage from Baltimore, in the State of Maryland, to Portsmouth, in the State of New Hampshire, carrying a cargo of corn, and that she had put into the port of New York by reason of stress of weather.

Fourth. That on or about the 27th day of March, 1869, the said schooner being at anchor in Buttermilk Channel, in the harbor of New York, and being ready to resume her said voyage, employed the said steam-tug Unit to tow her from the place where she then was through the Hell Gate, and the said steam-tug then undertook, for a reasonable compensation to be paid the said tug, to tow the said schooner, as above stated.

Fifth. That the said steam-tug took the said schooner in tow accordingly, on the said 27th March, and proceeded with her under steam from said Buttermilk Channel towards said Hell Gate, and that whilst so proceeding, and when in the East River, near the Catharine-street ferry-slip, on the Brooklyn side of said river, the persons navigating the

said steam-tug came in sight of the said steamboat City of Hartford, which was then passing down the said river under steam, and those on board the said steam-tug Unit so unlawfully, negligently, carelessly, and unskillfully conducted themselves in the business of towing the
3 said schooner, and those on board the said steamboat City of Hartford so unlawfully, negligently, carelessly, and unskillfully conducted themselves in navigating the said steamboat City of Hartford, that the said steamboat came into collision with the said schooner, and that thereby the said schooner was sunk, so that she became, with the property on board of her, a total loss.

Sixth. That the said collision happened by the fault, negligence, and unskillfulness of those on board the said steamboat and of those on board the said steam-tug, in moving in an improper part of the river, and at too great a rate of speed, and in not taking proper steps to avoid the collision, and the same happened without any fault of your libellants or of the persons on board of the said schooner.

Seventh. That by the said collision your libellants sustained loss and damage to the amount of eight thousand dollars.

Eighth. That all and singular the premises are true and within the admiralty jurisdiction of this court.

Wherefore your libellants pray for process in due form against said vessel, the steamboat City of Hartford, her tackle, apparel, machinery, and furniture, and said vessel, the steam-tug Unit, her tackle, apparel, machinery, and furniture, and each of them, and that all persons having any interest in the said vessels, or either of them, may be cited to appear and answer all and singular the matters hereinbefore set forth, and that the said vessels and each of them may be condemned and sold to pay the libellants' claim and costs, and for such further relief to the libellants as may be just.

JOSEPH OAKES.

Sworn to before me this second day of April, 1869.

JOHN A. OSBORN,
U. S. Commissioner.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants.

Filed April 2d, 1869.

4 *Exceptions to libel.*

U. S. district court, southern district of New York.

HUDSON S. RIDEOUT ET AL.
against
THE STEAMBOAT CITY OF HARTFORD, &C.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York.

The Hartford and New York Steamboat Company, claimants of the steamboat City of Hartford, excepts to the libel of Hudson S. Rideout, Joab W. Palmer, and other libellants, as follows:

FIRST EXCEPTION. That the fifth article of said libel is vague and insufficient, inasmuch as it does not state how or in what manner or respect those on board the said steamboat City of Hartford so "unlawfully, negligently, carelessly, and unskillfuly conducted themselves in navigating the said steamboat City of Hartford that the said steam-

boat came into collision with the said schooner, and that thereby the said schooner was sunk, so that she became, with the property on board of her, a total loss."

SECOND EXCEPTION. That the sixth article of said libel is vague, indefinite, and uncertain, in that it does not set forth the fault, negligence, and unskillfulness of those on board the said steamboat City of Hartford, and in that it does not set forth the part of the river in which said steamboat was, and which it alleges to be improper, nor the rate of speed which it alleges to be too great, nor the steps to avoid a collision which it alleges were proper for said steamboat to take.

5 THIRD EXCEPTION. The said libel nowhere sets forth any facts indicating or showing negligence, fault, or unskil'fulness, or mismanagement on the part of those navigating the said steamboat City of Hartford.

RICHARD H. HUNTLEY,
Proctor for Claimants.

Amended libel.

United States district court, southern district.

HUDSON S. RIDEOUT ET AL.
vs.
STEAMBOAT CITY OF HARTFORD AND STEAM-tug Unit.

To the honorable Samuel Blatchford, district judge for the southern district of New York:

The amended libel and complaint of Hudson S. Rideout, of Bucksport, Joab W. Palmer, George Bowen, Aaron Babb, Lysander S. Strickland, and William H. Strickland and John Doe, of Bangor, composing the firm of William H. Strickland & Co., of Bangor, Benjamin Johnson, of Hampden, James M. Nealley, Selah Walton, Charles M. Doane, and Joseph Oakes, of Brewer, and William Atwood, of Bucksport, all in the State and district of Maine, against the steamboat City of Hartford, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest therein; and against the steam-tug Unit, of New York, her tackle, apparel, and furniture, and all persons lawfully inter-

6 vening for their interest therein, in a cause of collision, civil and maritime, alleges as follows, that is to say:

First. That the said steamboat City of Hartford and the said steam-tug Unit are, and each of them is, now lying in the port of New York, and within the admiralty and maritime jurisdiction of this court.

Second. That at the several times hereinafter stated your libellants, except the libellant William Atwood, were the owners of a certain vessel or schooner called the Abbie S. Oakes, of Bangor, Maine, her tackle, apparel, and furniture; and all of your libellants, including said Atwood, were owners of the freight earned by the said schooner, and pending upon her voyage hereinafter mentioned; and your libellants, Hudson S. Rideout and William Atwood, were owners of certain supplies, clothing, charts, and other property on board the said schooner at the several times hereinafter stated.

7 Third. That the said schooner was, at the said several times, tight, staunch, and strong, well and sufficiently tackled, appareled, and furnished for the business and employment in which she was then engaged; and

that at the said time she was engaged on a voyage from Baltimore, in the State and district of Maryland, to Portsmouth, in the State and district of New Hampshire, carrying a cargo of corn, and that she had put into the port of New York by reason of stress of weather.

Fourth. That on or about the 27th day of March, 1869, the said schooner being at anchor in Buttermilk Channel, in the harbor of New York, and being ready to resume her said voyage, hired and employed the said steam-tug the Unit to tow her from the place where she then was through the Hell Gate, and the said steam-tug then undertook, for a reasonable compensation to be paid by said schooner, to tow the
7 said schooner as above stated, and for that purpose made fast to said schooner, taking said schooner on the port side of said tug.

Fifth. That the said schooner was so taken in tow by said tugboat at or about six o'clock in the morning of the day last aforesaid, the wind at the time blowing light from westward and the tide about four hours' flood. That the tug proceeded with said schooner in charge from Buttermilk Channel into and up the East River, and when near the Fulton-street ferry-slip, on the Brooklyn side of the river, came in sight of the said steamboat City of Hartford, which was then passing down said river under steam at less than a quarter of a mile distant up the river, and being about one-third of the width of the river there from the Brooklyn shore. That, as your libellants are informed and believe, immediately after coming in sight of the Hartford, ahead of said tug, and coming on towards her, the steam-tug blew two sharp whistles, and at the same time the master of the tug ordered and had the helm of the tug and of the schooner both put to the starboard, whereby they headed outwards towards the New York side. That the Hartford, which was at the time under a head of steam and going, say, upwards of eight knots on hour, answered the whistle, but did not slacken her speed nor alter her course to make way for said tug and tow, as she should have done, but kept on until she was about twice her length distant from the tug and tow, when she slowed without stopping. That this was too late to avoid a collision; and at this point, the master of the tug apprehending a collision to be imminent, backed his engine, and the tug and tow swung around so *so* that the port bow of the said schooner was presented to the Hartford, which struck her between the bowsprit and cat-head on the port side, and with such force as to tear the schooner adrift from the tug and cut her through to a point below water-mark, and doing great damage to said schooner and her cargo.

8 Sixth. That at the time of the said collision your libellants, said schooner, was wholly in charge and control and under the command of said tug and the master of the said tug; and because of that circumstance it is impossible for your libellants to state more accurately or precisely the facts and circumstances of said collision, but to the best information and belief of your libellants they are hereinbefore truly stated. And your libellants charge that said collision occurred without any fault, negligence, or blame on the part of said schooner, but through the fault, negligence, and want of skill of those on board the Hartford in being nearer to the Brooklyn side in going down the river instead of in the middle of the river, as she should have been; in going at too great a rate of speed, making it difficult in that crowded locality to avoid collision; in not slacking her speed immediately on coming in sight of said tug and tow; in not answering the whistle of the tug distinctly and intelligibly, so that there should be no mistake; and in keeping on her course, whereby a collision became inevitable, instead of altering the same, as she should have done, or in some or one of these respects. And also

through the fault, neglect, and want of skill of those on board of the said tug in going with her tow too far out from the Brooklyn shore; in not turning the other way and going nearer to the Brooklyn side on first coming in sight of said steamboat; in not regarding or understanding the answering signal of the Hartford, or in proceeding without a full understanding thereof; in stopping and backing her engine when a collision seemed imminent, or in some or one of these respects; and that, therefore, both of the said vessels, the Hartford and the Unit, are bound to make good the said damage to the libellants.

Seventh. That on the other hand, as your libellants are informed and believe, those on board of said steamboat claim that the said collision occurred solely through the fault of those on board said tug, and charge that besides the matter of fault charged by your libellants, as aforesaid, the tug was at fault in this: that upon her blowing two whistles the Hartford answered by one whistle for her to go to put into the Brooklyn side, which she disregarded, and that the collision was occasioned thereby, and by other mistakes on the part of said tug. But those on board of said tug, on the other hand, claim that the collision occurred solely through the fault of those on board said steamboat, and charge that, besides the matter of fault charged by your libellant as aforesaid, the said steamboat was at fault in this: that, on seeing said tug and tow and hearing said whistle, she did not get out of the way, so that said tug and tow, which were heavily laden, the said tug having another tow fast to her on her starboard side, and going very slow, not above four knots an hour, should safely pass; whereby, and by other mistakes on the part of said steamboat, said collision was occasioned.

Eighth. That it is impossible for your libellants to determine between the conflicting claims of said tug and said steamboat, or to measure exactly the fault of each, and state in what degree each contributed to the said collision; wherefore they have proceeded by this their libel against both of said vessels, and submit the matter to the determination of the court.

Ninth. That by the said collision your libellants, said schooner and goods, and her pending freight, became a total loss, to the damage of your libellants in the sum of eight thousand dollars.

Tenth. That all and singular the premises are true, and are within the admiralty and maritime jurisdiction of this court.

Wherefore your libellants pray that process in due form of law, according to the course and practice of the admiralty, may issue against said vessel, the steamboat City of Hartford, her tackle, apparel, machinery, and furniture, and also against the said steam-tug, the Unit, her tackle, apparel, machinery, and furniture, and that all persons having any interest in the said vessels, and each of them, may be cited to appear and answer all and singular the matters hereinafter before set forth, and that the said vessels, and each of them, may be condemned and sold to pay your libellants' claim and costs, and for such other relief to the libellants as may be according to the course and practice of the court.

H. S. RIDEOUT.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellant.

JOSEPH H. CHOATE,
Advocate.

CITY AND COUNTY OF NEW YORK, *ss.*

Hudson S. Rideout, one of the above-named libellants, being duly sworn, says that he has read the foregoing libel and knows the contents

thereof, and that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true. And further saith not.

H. S. RIDEOUT.

Sworn before me this 5th day of May, 1869.

A. W. GREEN,
Notary Public, N. Y. County.

Filed May 6, 1869.

11 Southern district of New York, United States district court.

HUDSON S. RIDEOUT AND OTHERS
vs.
THE STEAMBOAT CITY OF HARTFORD AND steam-tug Unit.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the second day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Hudson S. Rideout and others ag'st the steamboat City of Hartford, her tackle, etc., and ag'st the steam-tug Unit, her tackle, etc., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat and steam-tug, or vessels, their tackle, etc., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamboat and steam-tug, or vessels, their tackle, etc., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said steamboat and steam-tug, or vessels, their tackle, etc., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear

12 before the said court, to be held in and for the southern district of New York, on the 20th day of April, 1869, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this second day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and our Independence the ninety-third.

GEO. F. BETTS, *Clerk.*

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellant.

In obedience to the within motion, I attached the steamboat City of Hartford and steam-tug Unit therein described, on the 2d day of April, 1869, and have given due notice to all persons claiming the same, that

this court will, on the 20th day of April inst., (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated April 20, 1869.

13 At a term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the ninth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Samuel Blatchford, district judge.

STEAMBOAT CITY OF HARTFORD }
asm.
HUDSON S. RIDEOUT ET AL. }

And now the Hartford and New York Steamboat Company, intervening as owners for the interest of themselves in the said City of Hartford, appears before the honorable court and makes claim to the said steamboat, &c., as the same are attached by the marshal, under process of this court, at the instance of Hudson Rideout et al., and the said Hartford and New York Steamboat Company aver that they were in possession of the said steamboat at the time of the attachment thereof, and that the persons above named are the true and bona fide sole owners of the said steamboat, and that no other person is the owner thereof; and the said H. and N. Y. St. Co., the true and lawful bailee thereof, as owner, wherefore pray to defend accordingly.

ELISHA T. SMITH, *Pres't.*

RICHARD H. HUNTLEY,
Proctor for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Elisha T. Smith, being duly sworn, deposes and says that he resides in Hartford, Connecticut; that he is the president of the Hart-
14 ford and New York Steamboat Company above named, who are the owners of said, reside in city of Hartford, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

ELISHA T. SMITH.

Sworn to and subscribed this day of , A. D. 186 , before me.
JOHN A. OSBORN,
U. S. Commissioner.

Filed the 9th day of April, 1869.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Samuel Blatchford, district judge.

THE STEAM-PROPELLER UNIT, &c., *ads.* HUDSON S. RIDEOUT AND ALS. } 22488.

THE SAME *ads.* CHARLES ROBINSON. } 22,492.

15 And now Saul Thomas, on behalf of Philip H. Rockfeller and Mary Thomas, intervening as agent for the interest of the owners above named in the said steam-propeller, appears before the honorable court and makes claim to the said steam-propeller, &c., as the same are attached by the marshal, under process of this court, at the instance of Hudson S. Rideout and others, and also at the instance of Charles Robinson and the said Saul Thomas, avers that the owners were in possession of the said steam-propeller at the time of the attachment thereof, and that they are the true and bona fide owners of the said steam-propeller, and that no other person is the owner thereof; and that the said S. Thomas is the true and lawful bailee thereof, as agent; wherefore he prays to defend accordingly.

S. H. ROCKFELLER AND
MARY THOMAS,
By SOL'M THOMAS, *Agent.*

BEEBE, DONOHUE & COOKE,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Saul Thomas being duly sworn, deposes and says that he resides in the city of Brooklyn; that he is the agent of the owners of the within-named steam-propeller; that the owners of the steam-propeller reside in the eastern district of New York, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steam-propeller, as such agent, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

SOLOMON THOMAS.

Sworn to and subscribed this 26th day of May, A. D. 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Filed the 26th day of May, 1869.

16 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms in the city of New York, on Monday, the 17th day of May, in the year of our Lord 1869.

Present, the honorable Samuel Blatchford, district judge.

HUDSON S. RIDEOUT ET AL. *vs.* THE PROPELLER STEAM-TUG UNIT, impleaded, &c. } In open court. 22488.

CHARLES ROBINSON *vs.* THE SAME. } 22492.

On consent of the proctors for the respective libellants in the above-entitled actions, and on motion of Beebe, Donohue & Cooke, proctors

for the claimants of the steam-tug Unit, it is ordered that Charles A. Jayne and William H. Fernald be, and they are hereby, appointed appraisers to appraise the value of the said steam-tug Unit, her engine, tackle, &c.

And it is further ordered that the clerk of this court give notice of the appointment of said Jayne and Fernald as such appraisers.

SAMUEL BLATCHFORD.

Filed May 17, 1869.

17 U. S. district court.

CHARLES ROBINSON
against
THE STEAM-TUG UNIT, HER TACKLE, &C., IMpleaded with steamboat City of Hartford.

GENTS: You will please to take notice that we shall move this honorable court, on the 17th day of May inst., at 11 o'clock a. m., on that day, for an order appointing William H. Furnell sole appraiser to appraise the steam-tug Unit, her tackle, &c., or for such other or further order as may be just.

Dated May 15, 1869.

Yours, &c.,

BEEBE, DONOHUE & COOKE,
Att'ys for Cl'm't Unit.

To SCUDDER & CARTER, Esqs.,
Proctors for Lib'l'ts.

18 United States district court, southern district of New York.

In admiralty.

HUDSON S. RIDEOUT ET AL.
vs.
THE ST. PROPELLER UNIT, &C.

CHARLES ROBINSON
vs.
THE SAME.

We, the undersigned, having been appointed appraisers to appraise the value of the above-mentioned steam-propeller, her engine, &c., do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

WILLIAM D. FERNALD.
CHA'S E. JAYNE.

Subscribed and sworn to this 17th day of May, 1869, before me.

JOHN A. OSBORN,
U. S. Com'r.

Filed May 17, 1869.

19 United States district court, southern district of New York.

In admiralty.

HUDSON S. RIDEOUT ET AL.
vs.
THE ST. PROPELLER UNIT, &C. } 22488.

CHARLES ROBINSON
vs.
THE SAME. } 22492.

The undersigned, having been duly appointed and sworn as appraisers to appraise the value of the above-named steam-propeller, &c., do

report that we have examined and appraised the steam-propeller, and do find that said steam-propeller, &c., is worth the sum of three thousand dollars.

All of which is respectfully submitted.

Dated New York, May 18, 1869.

WM D. FERNALD.
CHAS E. JAYNE.

Filed May 18, 1869.

District court of the United States of America for the southern district of New York.

Filed the 9th day of April, 1869.

Know all men by these presents, that we, The Hartford and New York Steamboat Company, by Elisha T. Smith and John W. Frothingham and Charles S. Baylis, are held and firmly bound unto
20 Robert Murray, marshal of the United States for the southern district of New York, in the sum of sixteen thousand dollars, to be paid to the said Robert Murray, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 9th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 2d day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Hudson S. Rideout et al., libellants, against the steamboat City of Hartford and the steam-tug Unit, their tackle, &c., for the sum of eight thousand dollars, on which process of attachment has issued, and the said steamboat City of Hartford is in custody of the marshal under the said attachment, and Elisha T. Smith has applied for a discharge of said steamboat City of Hartford from the custody of the marshal, and has filed a claim claiming the said steamboat City of Hartford in behalf of said company as owners, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such that if the above-bounden, The Hartford and New York Steamboat Company and John W. Frothingham and Charles L. Baylis, shall abide by and perform the decree of this court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE HARTFORD & NEW YORK STEAMBOAT CO.,
By ELISHA T. SMITH, *President.* [L. S.]
JOHN W. FROTHINGHAM. [L. S.]
CHARLES S. BAYLIS. [L. S.]

Sealed and delivered, and taken and acknowledged this 9th day of April, 1869, before me.

JOHN A. OSBORN,
U. S. Commissioner.

21 UNITED STATES OF AMERICA.
Southern District of New York, ss:

John W. Frothingham and Charles S. Baylis being duly sworn, each deposes and says that he resides in the city of Brooklyn, and that he is

worth the sum of thirty-two thousand dollars, over and above all his just debts and liabilities.

JOHN W. FROTHINGHAM.
CHARLES S. BAYLIS.

Sworn to this 9th day of April, A. D. 1869, before me.

U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated this 5th day of May, 1869.

SAMUEL BLATCHFORD, *D. J.*

Recorded the 9th day of April, 1869.
Approved:
EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants.

District court of the United States of America for the southern district of New York.

Filed the 9th day of April, 1869.

Know all men by these presents that we, the Hartford and New York Steamboat Company, by Elisha T. Smith, and John W. Frothingham, and Charles S. Baylis, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of nine thousand dollars, to be paid to the said Robert Murray, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our
22 seals, and dated the 9th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 8th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Charles Robinson, libellant, against the Steamboat City of Hartford and the Steam-tug Unit, for the sum of forty-five hundred dollars, on which process of attachment has issued, and the said steamboat is in custody of the marshal under the said attachment, and Elisha T. Smith, has applied for a discharge of said steamboat from the custody of the marshal, and has filed a claim claiming the said steamboat City of Hartford, on behalf of the said company, as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such that if the above bounden, The Hartford & New York Steamboat Company, and John W. Frothingham and Charles S. Baylis, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE HARTFORD & NEW YORK STEAMBOAT CO.,
By ELISHA T. SMITH, *President.* [L. S.]
JOHN W. FROTHINGHAM. [L. S.]
CHAS. S. BAYLIS. [L. S.]

Sealed and delivered, and taken and acknowledged this 9th day of April, 1869, before me.

JOHN A. OSBORNE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss :

John W. Frothingham and Charles S. Baylis, being duly sworn,
23 each depose and say that he resides in the city of Brooklyn : that he is worth the sum of eighteen thousand dollars over and above his just debts and liabilities.

Sworn to, this 9th day of April, A. D. 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated this 12th day of April, 1869.
Recorded the 12th day of April, 1869.
SAMUEL S. BLATCHFORD, *D. J.*

Approved :
SCUDDER & CARTER, *for Libel'ts.*

District court of the United States for the southern district of New York.

In admiralty.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 26th day of May, 1869.

Whereas a libel was filed on the second day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Hudson S. Rideout and al., against the St. Propeller Unit, her engine, &c., impleaded, &c., and a libel was filed on the eighth day of April, 1869, by Charles Robinson against the said Propeller Unit, impleaded, &c.. for the reasons and causes in the said libels mentioned; and whereas the said propellor, Unit, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libels;
24 and whereas by an order of the court said st. propeller was ordered to be appraised, and thereafter bonded in the appraised value thereof, and such appraised value is the sum of three thousand dollars, as appears from said appraisement now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels and lands :

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree, to Beebe, Donohue & Cooke, esquires, proctors for the claimants of said st. propeller, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

P. H. ROCKEFELLER AND
MARY THOMAS,
By SOL'N THOMAS, *Agent.*
GEORGE TOWNSEND.
JOHN PETRIE.

Taken and acknowledged this 26th day of May, 1869, before me.
JOHN A. OSBORN.
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George Townsend and John Petrie, parties to the above stipulation, being duly sworn, each depose and say that he, Townsend, resides in the southern district, and that he, Petrie, resides in the eastern district of New York; that he is worth the sum of six thousand dol-
25 lars, over and above all his just debts and liabilities.

GEORGE TOWNSEND.
JOHN PETRIE.

Sworn to this 26th day of May, 1869, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 26th day of May, 1869.

District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 26th day of May, 1869.

Whereas a libel was filed in this court on the 2d day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Hudson S. Rideout et als. against the steam-propeller Unit, her tackle, &c., impleaded, &c., and also a libel was filed in this court on the 8th day of April, 1869, by Charles Robinson, against the said steam-propeller, &c., impleaded, &c., for the reasons and causes in the said libel mentioned, and praying that the Steam-propeller, &c., may be condemned and sold to pay the demands of said libellants in said cause, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by Solomon Thomas, agent, in behalf of the owners:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be,
26 and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

P. H. ROCKEFELLER AND
MARY THOMAS,
By SOL. THOMAS, *Agent.*
GEORGE TOWNSEND.
JOHN PETRIE.

Taken and acknowledged this 26th day of May, 1869.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George Townsend and John Petrie, parties to the above stipulation, being duly sworn, doth each depose and say that he, Townsend, resides in the southern, and he, Petrie, resides in the eastern district of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

Sworn to this 26th day of May, 1869, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 26th day of May, 1869.

District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 9th day of April, 1869.

Whereas a libel was filed in this court, on the 2d day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by
27 Hudson S. Rideout and al. against the Steamboat City of Hartford and Steam-tug Unit, for the reasons and causes in the said libel mentioned, and praying that said vessels may be condemned, &c., and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by Elisha T. Smith for the steamboat City of Hartford:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

ELISHA T. SMITH, *Pres't.*
JOHN W. FROTHINGHAM.
CHARLES S. BAYLIS.

Taken and acknowledged this 9th day of April, 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John W. Frothingham and Charles S. Baylis, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN W. FROTHINGHAM,
CHARLES S. BAYLIS.

Sworn to this 9th day of April, 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 9th day of April, 1869.

28 District court of the United States for the southern district of New York.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 8th day of April, 1869.

Whereas a libel was filed in this court on the 8th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Charles Robinson against the Steamboat City of Hartford, her tackle, &c., and Steam-tug Unit, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said vessels be condemned and sold, &c., and the said libellant and James C. Carter and Howes Baker, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his sureties, execution

may issue against their goods, chattels, or lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

CHARLES ROBINSON,
By JAMES C. CARTER, *Att'y.*
JAMES C. CARTER.
HOWES BAKER.

Taken and acknowledged this 8th day of April, 1869, before me.
GEO. F. BETTS,
U. S. Comm'r.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. Carter and Howes Baker, parties to the above stipulation, being duly sworn, doth depose and say that he, said Carter, resides in the city of New York, and he, said Baker, resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES C. CARTER.
HOWES BAKER.

Sworn to this 8th day of April, 1869, before me.
GEO. F. BETTS,
U. S. Comm'r.

Recorded the 8th day of April, 1869.

District court of the United States for the southern district of New York.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the second day of April, 1869.

Whereas a libel was filed in this court on the second day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Hudson S. Rideout, Joseph Oakes, and others, against the steamboat City of Hartford, her engines, tackle, &c., and the steam-tug Unit, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat and steam-tug may be condemned and sold to pay the demands of libellants; and the said libellants and Edward H. Loud and H. W. Loud, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of
30 the libellants or their sureties execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the

cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

JOSEPH OAKES.
EDWARD H. LOUD.
H. W. LOUD.

Taken and acknowledged this 2d day of April, 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward H. Loud and H. W. Loud, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

W. H. LOUD.
EDWARD H. LOUD.

Sworn to this second day of April, 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the second of April, 1869.

31 NEW YORK, *May* 25, 1869.

To the clerk of U. S. dist. court, southern dist. New York:

George Townsend and John Petrie have justified satisfactorily to us as sureties on bonding steam-tug Unit in Rideout v. Steam-tug Unit.

Yours, etc.,
EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellant Rideout.

The above-named sureties are satisfactory to us in case of Robinson v. Unit, etc.

Yours, truly,
SCUDDER & CARTER,
Proctors for Libellant Robinson.

(Endorsed:) Consent as to sureties on bonds. Filed May 26, 1869.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the 26th day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Samuel Blatchford, district judge.

THE ST. PROPELLER UNIT, &C., IMPLEADED, &C., *ads.* HUDSON S. RIDEOUT ET AL.

32 THE SAME *ads.* CHARLES ROBINSON.

The steam-propeller Unit (impleaded in the above-entitled actions as to the steamboat City of Hartford) having been appraised in the sum of three thousand dollars and bonds for costs and value, the latter in the appraised amount having been executed and the same being approved

by the proctors for libellants in each action, it is now, on motion of Beebe, Donohue & Cooke, proctors for the claimants, ordered that said steam-propeller Unit be discharged from custody, the stipulation for value to represent same in the above-entitled actions, and that the claimants' appearance be, and the same is hereby, entered herein.

SAM'L BLATCHFORD.

At a stated term of the district court of the United States of America for the southern district of New York, held at the U. S. court-rooms, in the city of New York, on Friday, the 9th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Samuel Blatchford, district judge.

THE STEAMBOAT CITY OF HARTFORD, impleaded, &c.,
asm.
HUDSON S. RIDEOUT ET AL.

On filing claim and stipulations for claimants' costs, together
33 with a bond, under the act of Congress, in double the amount claimed, approved by the district judge, on motion of R. H. Huntley, proctor for the claimants of the steamboat City of Hartford, it is ordered that the appearance of the claimant' be, and the same is hereby, entered, and that a copy of this order be delivered to the marshal.

Filed April 9, 1869.

United States district court, southern district of New York.

HUDSON S. RIDEOUT AND OTHERS, LIBELLANTS,
against
THE STEAMBOAT CITY OF HARTFORD, HER &c., and the The Hartford and New York Steamboat Company, claimants, and the Steam-tug Unit, her tackle, &c., and Mary Thomas, and Philip H. Rockfeller, claimants.

CITY AND COUNTY OF NEW YORK, *ss:*

Joseph H. Choate, being duly sworn, deposes and says that he is one of the proctors of the libellants in the above-entitled case; that the original libel therein was filed with the clerk of the court on the second day of April, 1869; that on the same day the usual process and monition of this court was duly issued and delivered to the marshal for the said district; that under and by virtue of the said process and monition of said steamboat City of Hartford and the said steam-tug Unit
34 were afterwards and before the return-day thereof duly attached, as by the return of the said marshal fully appears, and the usual notice thereof given by publication; that on the ninth day of the said month the said The Hartford and New York Steamboat Company filed their claim to the said steamboat City of Hartford, and the usual claimants' stipulation, and a bond in the usual form, according to the act of Congress and the rules and practice of this court, whereupon the said steamboat was released from custody, and that on the return-day of the said process and motion the usual proclamation was made in open court, and the said The Hartford and New York Steamboat Company appeared, by their proctor, Richard H. Huntley, as claimants to the said steamboat, and the said Mary Thomas and Philip H. Rockefeller ap-

peared, by their proctors, Beebe, Donohue & Cooke, as claimants to the said steam tug, and no other claimant or claimants did then, or have at any time, appeared, or filed any claim to the said vessels, or either of them; that on the 26th day of May, 1869, the said claimants to the said steam-tug filed a claim to the said steam-tug, together with the usual claimant's stipulation and costs, and a stipulation for value in the usual form, according to the rules and practice of this court, whereupon the steam-tug was released from custody under the said process; that the time of the claimants to the said steamboat to answer the said libel was extended until the fourth day of May, 1869, and of the claimants to the said steam-tug until the twenty-first day of the same month; that on the 28th day of April, 1869, the proctors for the claimants to the said steamboat served upon the proctors of the libellants a copy of the exceptions of the said claimants to certain portions of the said libel; that afterwards, on the fourth day of May, 1869, an argument was had before this honorable court upon the said exceptions, and the said exceptions were then and there allowed by the said court, and leave granted to the libellants to amend their said libel, as by the minutes of the
35 clerk of said court more fully appears, but owing to an inadvertence on the part of the proctors for the libellants no order to that effect has yet been entered; that afterwards, on the sixth day of May, 1869, the proctors for the libellants filed their amended libel herein, duly verified by one of the said libellants, praying for an answer from all persons having any interest in the said vessels, and each of them, to all and singular the matters in said libel set forth, as by said amended libel more fully appears, and on the same day served a copy of the said amended libel, together with a notice of the filing of the same, upon the proctors for the respective claimants above mentioned; that no answer to the original libel, or the amended libel, or any part of either of the said libels, has been filed or served by the said claimants, or either of them, nor, except as above mentioned, has any extension of the time of the said claimants, or either of them, to answer or except to the same, been granted to the said claimants, or either of them; and the libellants desire that the claimants be required to answer the said amended libel, and that the said cause be placed upon the calendar of this court for trial, or such other disposition thereof be made as may be proper.

JOSEPH H. CHOATE.

Sworn to before me this 23d day of January, 1870.

A. W. GREEN,
Notary Public, N. Y. County.

Filed Feb. 25, 1870.

36 At a stated term of the district court of the United States for the southern district of New York, held at the court-rooms in the city of New York on the 25th day of February, 1870.

Present, Hon. Samuel Blatchford, district judge.

HUDSON S. RIDEOUT AND OTHERS, LIBELLANTS,
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., and The Hartford and New York Steamboat Company, claimants, and the Steam-tug Unit, her tackle, &c., and Mary Thomas and Philip R. Rochefeller, claimants.

Upon reading and filing the affidavit of Joseph H. Choate, sworn to on the 23d day of February, 1870, and on all the pleadings and proceed-

ings heretofore had in the above-entitled cause, and on motion of Evarts, Southmayd & Choate, proctors for the libellants in said cause, it is ordered that an order be entered herein, nunc pro tunc, as of the fourth day of May, 1869, allowing the exceptions to the original libel herein, and granting leave to the libellant to file an amended libel in the place and stead of the original libel, and without prejudice to the proceedings heretofore had herein.

And it is further ordered that the amended libel filed with the clerk of this court on the sixth day of May, 1869, stand of record as the amended libel of the libellants herein, as if duly filed pursuant to such order so to be entered.

37 And it is further ordered that the claimants to each of the said vessels do answer all and singular the matter in said amended libel set forth within seven days after the service upon their respective proctors in said cause of a copy of this order and of the order hereinbefore mentioned, allowing the claimants' exceptions and granting leave to the libellants to amend their libel.

And it is further ordered that if the claimants to the said vessels, or either of them, shall fail to answer the same within the said time, that the claimants to such vessel or vessels shall be adjudged to be in default, and that all and singular the matter in the said amended libel set forth shall be taken pro confesso as against all the claimants so in default.

And it is hereby further ordered that this cause be placed upon the calender of this court for the March term of the current year in the position which it would have held, if issue had been joined on the thirteenth day of May, 1869.

SAMUEL BLATCHFORD, *J.*

Filed February 25th, 1870.

38 At a stated term of the district court of the United States, held at the court-rooms, in the city of New York, on the fourth day of May, eighteen hundred and sixty-nine.

Present ,Hon. Samuel Blatchford, district judge.

HUDSON S. RIDEOUT AND OTHERS, LIBELLANTS,
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, etc., and The Hartford and New York Steamboat Company, claimants, and the Steam-tug Unit, her tackle, etc., and Mary Thomas and Philip H. Rockfeller, claimants.

Upon reading and filing the libel of the libellants hereinfi, led on the second day of April, 1869, and the exceptions thereto of the claimants The Hartford and New York Steamboat Company, and after hearing M'r Huntley on behalf of said claimants, and M'r Choate on behalf of the libellants:

Now, on motion of Richard H. Huntley, proctor for the said claimants, it is ordered that the said exceptions to the said libel be, and the same are hereby, allowed.

And it is further ordered that the libellants have leave to file an amended libel in the place and stead of the said original libel herein, without prejudice to the proceedings heretofore had herein.

SAMUEL BLATCHFORD.

Filed Feb'uary 25, 1870.

39 *Answer.*

United States district court, southern district of New York.

HUDSON S. RIDEOUT ET AL.
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of The Hartford and New York Steamboat Company, claimants and owners of the steamboat City of Hartford, her tackle, apparel, furniture, and engine, to the amended libel and complaint of Hudson S. Rideout, Joab W. Palmer, George Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, John Doe, Benjamin Johnson, James M. Neally, Selah Walton, Charles M. Doane, Joseph Oakes, and William Atwood, against said steamboat, her engines, &c., respectfully shows to this honorable court:

First. That this claimant is, and during all the times stated in this libel was, the sole owner, and in possession of said steamboat city of Hartford.

Second. That this claimant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second, third, and fourth articles of said libel, and it leaves the libellants to such proof as to the said allegations as they may be advised.

Third. That the facts and circumstances attending the collision set forth in the fifth and sixth articles of said libel are untruly alleged and set forth, and the specific allegations in those articles contained as to fault and negligence on the part of the City of Hartford are wholly untrue.

40 Fourth. That the said steamboat City of Hartford is a regular passenger and freight boat, of a large size, plying regularly between the city of Hartford, in the State of Connecticut, and the city of New York, leaving each of said cities on alternate days; that on the morning of the collision referred to in the libel said steamboat was on her regular trip from Hartford to New York, and at about six and a half o'clock had arrived in the East River at a point off Corlear's Hook, in the city of New York, where she discovered ahead of her some tugs and ferry boats in the middle of the river, to avoid which she sheared off toward the Brooklyn shore; that soon afterwards, and while in the act of regaining her position in the middle of the river but before she had regained that position, the City of Hartford discovered over and across the point of land at the Fulton Ferry, on the Brooklyn shore, a tug, with a schooner on each side of her, approaching and running rapidly before a strong flood-tide; that the City of Hartford, being then on a shear towards the middle of the river, blew one whistle as a signal to said tug to keep in with the Brooklyn shore; that said tug replied with two whistles, thereby indicating her intention to make for the middle of the river; that thereupon and immediately the City of Hartford replied with two whistles, thus notifying the tug that she acceeded to the manœuvre of the latter, and at the same time the City of Hartford shut off her steam and hove her wheel to starboard; that at this time said steamer was about nine hundred feet distant from the said tug; that soon after said tug suddenly changed her course in towards the Brooklyn shore and then blew one whistle as a signal to the City of Hartford to make towards the middle of the stream; that the City of Hartford, seeing that by such a manœuvre a collision would be certain,

immediately blew three whistles, which was a notice that danger was impending, and at the same time backed her engine strong and
41 continued so backing till her wheels had made two or three revolutions; that the tug, running with the tide, did not, as appeared to those on board the City of Hartford, stop or back her engine until she was nearly up to the City of Hartford, when she did back, and by so doing spread the stems of the two schooners out at a large angle with herself, and at the same time kept swinging in towards the Brooklyn shore; that while each steamer was in the above-described condition, the City of Hartford still backing her engine, the collision took place, whereby the damage was done to the vessel of the libellants, the stem of the City of Hartford, and the port bow of said vessel coming in contact.

Fifth. That if said tug had obeyed the first signal of the City of Hartford and kept under the Brooklyn shore, or if, after she took the opposite course, she had continued it, or if, even after she again changed, she had seasonably stopped and backed her engine, no collision would have occurred, and that it was entirely through the fault and negligence of said tug, and in no way through the fault or negligence of the City of Hartford, that said collision occurred, and that with the manœuvering adopted by the said tug, which proved to be the Unit, it was impossible for the City of Hartford to avoid a collision.

Sixth. That from the time the City of Hartford passed Corlear's Hook and prior thereto she was under easy steam, and was in all respects conforming to law and to the rules and regulations for navigating steamers, and she took every precaution necessary and proper to avoid collisions and dangers of every kind.

Seventh. That all and singular the premises are true.

42 Wherefore this claimant prays that the said libel be dismissed with costs.

HARTFORD AND NEW YORK STEAMBOAT CO.,
By W'M H. GOODSPEED, *V. P.*

Sworn before me this 3d day of March, 1870.

CHA'S W. NEWTON,
U. S. Commissioner for the Southern District of New York.

RICHARD H. HUNTLEY,
Proctor and Advocate.

Filed March 5, 1870.

Answer.

U. S. district court.

THE STEAM-TUG UNIT, HER TACKLE, &C., impleaded, &c.,
against
HUDSON S. RIDEOUT AND OTHERS.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of Philip H. Rockefeller and Mary Thomas, respondents, to the libel and complaint of Hudson S. Rideout, John W. Palmer, George Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, and John Doe, composing the firm of William H. Strickland & Co., Benjamin Johnson, James M. Neally, Selah Walton, Charles M. Deane, and Joseph Oakes and William Atwood, libellants, against the steamboat City of Hartford, her tackle, apparel, and furniture, and the

steam tug Unit, her tackle, &c., and all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows, that is to say:

43 First. These respondents admit the allegations contained in the first article of the said libel.

Second. That these respondents have no knowledge or information as to the matters alleged in the second article of the said libel, and therefore deny the same, and leave the libellants to make such proof as they are advised it is material and necessary for them to make.

Third. That these respondents have no knowledge as to the several allegations contained in the third article of the said libel, except they admit that at the times mentioned in the said article the said schooner was in the port of New York, and they therefore deny the same, and leave the libellants to make such proof as they shall be advised it is material and necessary for them to make.

Fourth. That these respondents admit the allegations contained in the fourth article of said libel.

Fifth. That the allegations contained in the fifth article of the said libel are substantially correct, but where such allegations differ from the statements hereinafter made they are incorrect.

Sixth. That these respondents admit that the allegations contained in the sixth article of the said libel are substantially correct, but where they differ from the statements hereinafter made they are incorrect.

Seventh. That these respondents have no knowledge as to what is claimed by those on board the City of Hartford, as contained in the seventh article of the said libel, but wherever the same differs from the statements either herein admitted to be correct, or from the facts herein alleged by these respondents to be correct, these respondents deny each and every allegation contained in the seventh article of the said libel.

44 Eighth. These respondents state that at about the time stated in the said libel the said steam-tug Unit took the said schooner in tow to be taken through Hell Gate, the tide at the time running flood. That she also took in tow another schooner or vessel bound through Hell Gate. That the schooner Abbie S. Oakes was lashed to the port side of said steam-tug Unit and the other schooner to the starboard side of said steam-tug. That the course of the said steam-tug Unit was up along the Brooklyn docks and piers, and about seventy five to one hundred yards distant therefrom. That when at a point at or nearly opposite Fulton Ferry, on the Brooklyn side, the steamboat City of Hartford was discovered half a mile or more ahead of the said steam-tug, coming at a rapid rate and upon a line inside of the course of the said steam-tug and her tow. That immediately two whistles were blown by the said steam-tug, and her wheel, as well as those of the vessels, were put hard astarboard, thus indicating her intention of going to the left, and the said steamboat City of Hartford blew two distinct whistles in answer to the signal of the said steam-tug, thus confirming the course intended to be taken by the said steam-tug. That the stern of the said steam-tug, as well as those of the said schooners in tow, gradually turned to the left and angling toward the New York side. That the said steamboat City of Hartford instead of starboarding and keeping to the left, seemed to have ported, and was, in fact, rapidly coming down upon the said steam-tug and tow. That when within a length or two of the said steam-tug the said steamboat City of Hartford blew a single whistle, but at too late a period to allow the said steam-tug to change her course, and, as the only alternative and the only proper course, the bells of the said steam-tug were instantly and rapidly rung

to slow, stop, and back, and which were forthwith obeyed. That the effect of backing and the flood tide was to throw the head of the
45 steam-tug and the said vessels to starboard, so that when the collision actually took place the head of the said steam tug and the said vessels were angling towards the Brooklyn shore, and the said steamboat City of Hartford kept on without stopping the onward motion of her wheels until within a very short distance of the bow of the said schooner Abbie S. Oakes, and that she struck the port bow of the said schooner, with her stem, a very violent blow, crushing in her bow and sinking her in a very short time, the headway of the said steam-tug and the said schooner having been, at the time of the collision, overcome. That the said collision happened solely by the carelessness, negligence, and unseamanlike conduct of those navigating the said steamboat City of Hartford; and, among other things, in answering the signal of the steam-tug with two whistles and then not starboarding, in keeping on in a direction which would strike the tow, in blowing a single whistle when too close to avoid a collision, and in not stopping in time to avoid a collision.

Ninth. That with a full knowledge of the facts there ought to be no embarassment as to which vessel was in fault, and that it was clearly the said steamboat; and they therefore deny the allegations contained in the eighth article of the said libel.

Tenth. That these respondents admit that the said schooner, freight, and cargo became a total loss, but these respondents have no knowledge as to the extent of the libellants' loss, and therefore leave them to make such proof as they may be advised is material.

Eleventh. That these respondents neither admit nor deny the jurisdiction of this court.

Wherefore these respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises, and that they may be
46 hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS ROCKEFELLER,
Agent.

Sworn to before me this 27th day of May, 1869.

A. W. HALL,
Notary Public, N. Y. Co.

BEEBE, DONOHUE & COOKE, *Proctors.*
BEEBE, *Advocate.*

Filed May 28th, 1870.

Libel.

United States district court; southern district of New York.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., and Steam-tug Unit, her tackle, &c.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Charles Robinson, of Portsmouth, in the State of New Hampshire, against the steamboat City of Hartford, her tackel, apparel, furniture, and engine, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, respectfully shows:

47 First. That the said steamboat City of Hartford and the said steam-tug Unit are, and each of them is now, in this district.

Second. That heretofore, and on or about the 27th day of March, 1869, your libellant was the owner of a quantity of corn, consisting of about four thousand five hundred bushels, which, upon and before said day, was on board of a certain ship or schooner called the Abbie S. Oakes, for the purpose of being carried therein from Baltimore, in the State of Maryland, to Portsmouth aforesaid; that upon said 27th day of March said schooner, having the corn of your libellant on board, was lying at anchor in Buttermilk Channel, in the harbor of New York, where she had put in by reason of stress of weather.

Third. That on or about that day the said schooner, being ready to resume her said voyage, was taken in tow by the said steam-tug Unit for the purpose of being towed by said tug from the place where she then lay through the Hell Gate, and the said tug then undertook for a reasonable compensation to tow said schooner and her cargo as aforesaid.

Fourth. That while the said tug was engaged in towing said schooner and her cargo from Buttermilk Channel aforesaid towards Hell Gate, and when in the East River near the Catharine-street ferry-slip, on the Brooklyn side of said river, the persons navigating said tug came in sight of the said steamboat City of Hartford, which was then passing down the said river under steam, and those on board of and navigating the said steam-tug Unit, so unlawfully, negligently, carelessly, and unskilfully conducted themselves in the business of towing the said schooner, and those on board of and navigating the said steamboat

48 City of Hartford so unlawfully, negligently, carelessly and unskilfully conducted themselves in navigating the said steamboat City of Hartford, that the said steamboat came into collision with the said schooner, and that thereby the said schooner was sunk and the corn on board thereof, belonging to your libellant, was also sunk and greatly damaged.

Fifth. That the said collision happened by the fault, negligence, and unskilfulness of those on board the said steamboat, and of those on board the said steam-tug, in moving in an improper part of the river, and at too great a rate of speed to avoid the collision.

Sixth. That the value of the corn so on board of said schooner at the time of the said collision was about the sum of five thousand dollars, and your libellant was damaged by said collision to the amount of forty-five hundred dollars, as near as your libellant can now ascertain such damage.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against said steamboat City of Hartford, her tackle, apparel, furniture, and engine, and against the said steam-tug Unit, her tackle, apparel, furniture, and engine, and against each of said vessels, and that all persons claiming any interest in said vessels, or either of them, may be cited to appear and answer all the matters aforesaid, and that the said vessels, and each of them, may be condemned and sold to pay the libellant's claim, with costs; and that your libellant may have such other or further relief as may be just.

CHARLES ROBINSON,
By JOHN H. DANE, *Agent.*

SCUDDER & CARTER,
Proctors for Libellants.

49 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John H. Dane, of Boston, being duly sworn, deposes and says that he is the agent of Charles Robinson, the libellant in the foregoing libel mentioned; that he has heard read the said libel and knows the contents thereof, and that the same is true to the best of his knowledge and belief; that said libellant is now absent from the southern district of New York, being, as deponent believes, at Portsmouth, in the State of New Hampshire, where he resides.

JOHN H. DANE.

Subscribed and sworn to before me this 7th day of April, 1869.

J. H. K. BLAUVELT,
Notary Public, New York County.

Filed April 8, 1869.

Exceptions to libel.

United States district court, southern district of New York.

CHARLES ROBINSON
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., &c.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The Hartford and New York Steamboat Company, claimants of the steamboat City of Hartford, excepts to the libel and complaint of Charles Robinson, libellant, against said steamboat, her tackle, apparel, furniture, and engine, &c., as follows:

50 FIRST EXCEPTION. That that portion of the fourth article of said libel which refers to said steamboat City of Hartford is vague, indefinite, and insufficient, in that it does not state how or in what manner or respect those navigating said steamboat "unlawfully, negligently, carelessly, and unskillfully conducted themselves in navigating the said steamboat City of Hartford," nor does said article in any manner set forth the facts connected with or productive of said collision.

SECOND EXCEPTION. That the fifth article in said libel is vague, indefinite, uncertain, and insufficient, in that it does not set forth "the fault, negligence, and unskillfulness of those on board the said steamboat" City of Hartford, from which it is alleged that said collision happened; nor does it state any facts from which fault, negligence, or unskillfulness may be inferred.

THIRD EXCEPTION. That said libel does not contain a statement of the facts of said collision, or therewith connected, and does not allege facts that are issuable, or which may be admitted or denied, or upon which the liability of the claimant or of said steamboat can be predicated; but that so far as the collision is alleged the same is set forth in a manner altogether vague, indefinite, and uncertain and insufficient.

RICHARD H. HUNTLEY,
Proctor for Claimants.

Filed April 30, 1869.

51 *Amended libel.*

U. S. district court, southern district of New York.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD AND THE Steam-tug Unit, their tackle, &c.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The amended libel and complaint of Charles Robinson, of Portsmouth, in the State of New Hampshire, against the steamboat City of Hartford, her tackle, apparel, furniture, and engine, and against all persons lawfully intervening for their interest therein, and against the steam-tug Unit, of New York, her tackle, apparel, furniture, and engine, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows, that is to say:

First. That the said steamboat City of Hartford and the said steam-tug Unit are, and each of them is, now lying in the port of New York, and within the admiralty and maritime jurisdiction of this court.

Second. That heretofore, and at the several times hereinafter mentioned, your libellant was the owner of a quantity of corn, consisting of about four thousand five hundred bushels, which was on board of a certain ship or schooner called the Abbie S. Oakes.

Third. That at such several times the said schooner was tight, staunch, and strong, well and sufficiently tackled, apparelled, and furnished
52 for the business and employment in which she was then engaged, and that at the said time she was engaged on a voyage from Baltimore, in the State and district of Maryland, to Portsmouth, in the State and district of New Hampshire, having on board the corn of your libellant, as aforesaid, and that she had put into the port of New York by reason of stress of weather.

Fourth. That on or about the 27th day of March, 1869, the said schooner, being at anchor in Buttermilk Channel, in the port of New York, and being ready to resume her said voyage, hired and employed the said steam-tug, the Unit, to tow her and her cargo from the place where she then lay through the Hell Gate, and the said steam-tug then undertook, for a reasonable compensation to be paid by said schooner, to tow said schooner and her cargo as above stated, and for that purpose made fast to said schooner, taking said schooner on the port side of said tug.

Fifth. That the said schooner was so taken in tow by said tug-boat at about six o'clock in the morning of the day last aforesaid, the wind at the time being light from westward, and the tide about four hours flood. That the said tug proceeded with said schooner and her cargo in charge from Buttermilk Channel into and up the East River, and when near the Fulton-street ferry slip, on the Brooklyn side of the river, came in sight of the said steamboat City of Hartford, which was then passing down said river under steam at less than a quarter of a mile distant up the river, and being about one-third of the width of the river there from the Brooklyn shore. That, as your libellant is informed and believes, immediately on coming in sight of the Hartford, ahead of said tug, and coming on towards her, the steam-tug blew two sharp whistles, and at the same time the master of the tug ordered and had the helm of the tug and of the schooner both put to the starboard, whereby they headed

ontward and towards the New York side. That the Hartford,
53 which was at the time under a full head of steam and going, say, upwards of eight knots an hour, answered the whistle, but did not slacken her speed nor alter her course to make way for said tug and tow, as she should have done, but kept on until she was twice her length distant from the tug and tow, when she slowed without stopping. That this was too late to avoid a collision, and that at this point the master of the tug, apprehending a collision to be imminent, backed his engine, and the tug and tow swung around so that the port bow of the said schooner was presented to the Hartford, which struck her between the bowsprit and cathead, on the port side, and with such force as to tear the schooner adrift from the tug, and cut her through to a point below water-mark, and doing great damage to said schooner and her cargo.

Sixth. That at the time of the said collision the said schooner was wholly in charge and control and under the command of said tug and the master of said tug, and because of that circumstance it is impossible for your libellant to state more accurately the facts and circumstances of said collision, but to the best information and belief of your libellant they are hereinbefore truly stated. And your libellant charges that said collision occurred through the fault, negligence, and want of skill of those on board the Hartford, in being nearer to the Brooklyn side in going down the river instead of in the middle of the river, as she should have been; in going at too great a rate of speed, making it difficult in that crowded locality to avoid collision in not slacking her speed immediately on coming in sight of said tug and tow; in not answering the whistle of the tug distinctly and intelligibly, so that there should be no mistake, and in keeping on her course, whereby a collision became inevitable, instead of altering her course, as she should have done, or in some or one of these respects. And also, through the fault, neglect, and want of skill of those on board of the said tug, in going with her tow too far out from the Brooklyn shore; in not turning the other
54 way, and going nearer to the Brooklyn side on first coming in sight of said steamboat; in not regarding or understanding the answering signal of the Hartford, or in proceeding without a full understanding thereof; in stopping and backing her engine when a collision seemed imminent, or in some or one of these respects; and that, therefore, both of said vessels, the Hartford and the Unit, are bound to make good the damage to the libellant.

Seventh. That, on the other hand, as your libellant is informed and believes, those on board of said steamboat claim that such collision occurred solely by the fault of those on board of said tug, and charge that besides the matters of fact charged by your libellant as aforesaid, the tug was at fault in this, that upon her blowing two whistles the Hartford answered by one whistle, for her to go to port into the Brooklyn side, which she disregarded, and that the collision was occasioned thereby, and by other mistakes on the part of said tug. But those on board of said tug, on the other hand, claim that the collision occurred solely through the fault of those on board of said steamboat, and charge that, besides the matters of fault charged by your libellant as aforesaid, the said steamboat was at fault in this, that on seeing said tug and tow, and hearing said whistle, she did not get out of the way, so that said tug and tow, which were heavily laden, the said tug having another tow fast to her on her starboard side, and going very slow, not above four knots an hour, should safely pass, whereby, and by other mistakes on the part of said steamboat, said collision was occasioned.

Eighth. That it is impossible for your libellant to determine between

the conflicting claims of said tug and said steamboat, or to measure exactly the fault of each, and state in what degree each contributed to said collision; wherefore he has proceeded by this his libel against both
55 of said vessels, and submits the matter to the determination of the court.

Ninth. That the value of the corn so on board of said schooner at the time of said collision, and belonging to this libellant, was the sum of about five thousand dollars, and your libellant was damaged by said collision to the amount of forty-five hundred dollars, as near as your libellant can now ascertain such damage.

Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellant prays that process in due form of law, according to the course and practice of the admiralty and maritime jurisdiction of this court, may issue against said vessel, the steamboat City of Hartford, her tackle, apparel, furniture, and engine, and also the said steam-tug the Unit, her tackle, apparel, furniture, and engine; and that all persons having any interest in said vessels, and each of them, may be cited to appear, and answer all and singular the matters hereinbefore set forth, and that the said vessels, and each of them, may be condemned and sold to pay your libellant's claims and costs, and for such other relief to the libellant as may be according to the course and practice of this court.

HOWES BAKER, *Agent.*

SCUDDER & CARTER,
Proctors for Libellant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Howes Baker, of the city of Brooklyn, being duly sworn, says that he is the agent of Charles Robinson, the libellant herein; that he has heard the foregoing amended libel read, and the same is true to his best knowledge and belief; that the reason this verification is not made by
56 the libellant herein is because he is now absent from the southern district of New York, being, as deponent believes, in the State of New Hampshire.

HOWES BAKER.

Sworn to before me this 12th day of May, 1869.

EDWARD S. CLINCH,
Notary Public, N. Y.

Filed May 13, 1869.

Southern district of New York, United States district court.

CHARLES ROBINSON
vs.
STEAMBOAT CITY OF HARTFORD AND STEAM-tug Unit, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 8th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, by Charles Robinson against the steamboat City of Hartford, her tackle,

&c., and steam-tug Unit, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said vessels or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had
57 that the said vessels or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said vessels or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel; that they be and appear before the said court, to be held in and for the southern district of New York, on the 27th day of April inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel Blatchford, judge of the said court, at the city of New York, this 8th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third.

GEORGE F. BETTS, *Clerk.*

SCUDDER & CARTER,
Proctors for Libellant.

In obedience to the within monition I attached the steamboat City of Hartford and steam-tug Unit, therein described, on the 8th day of April, 1869, and have given due notice to all persons claiming the same that this court will, on the 27th day of April inst., (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY, *Marshal.*

Dated April 27, 1869.

58 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the ninth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

STEAMBOAT CITY OF HARTFORD
asm.
CHARLES ROBINSON.

And now said Hartford and New York Steamboat Company, intervening as owners of the steamboat City of Hartford for the interest of themselves in the said steamboat, appears before the honorable court and makes claim to the said steamboat, &c., as the same are attached by the marshal, under process of this court, at the instance of Charles Robinson; and the said Hartford and New York Steamboat Company aver that they were in possession of the said steamboat at the time of

the attachment thereof, and that the persons above named are the true and bona fide sole owner of the said steamboat, and that no other person is the owner thereof. and the said company the true and lawful bailee thereof, as owners; wherefore, they pray to defend accordingly.

ELISHA T. SMITH, *President.*

RICHARD H. HUNTLEY,
Proctor for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Elisha T. Smith, being duly sworn, deposes and says that he resides in Hartford; that he is the president of the New York and Hartford Steamboat Company above named; that the owners of said steam-
59 boat reside in Hartford, Connecticut, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said company, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

ELISHA T. SMITH, *President.*

Sworn to and subscribed this 9th day of April, A. D. 1869, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Filed the 9th day of April, 1869.

At a stated term of the district court of the United States of America for the southern district of New York, held at the U. S. court-rooms in the city of New York on Monday, the 12th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Samuel Blatchford, district judge.

THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., impleaded, &c.,
asm.
CHA'S ROBINSON.

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge. On motion of R. H. Huntley, proctor for the claimant, it is ordered, that the appearance of the claimant for
60 said City of Hartford, be, and the same is hereby entered, and that a copy of this order be delivered to the marshal.

Filed April 12, 1869.

Answer of Unit.

United States district court.

City of Hartford.

THE STEAM-TUG UNIT, HER TACKLE, &C., impleaded, &c.,
ads.
CHARLES ROBINSON.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The separate answer of Mary Thomas and William H. Rockefeller to the libel and complaint of Charles Robinson, of Portsmouth, in the

State of New Hampshire, against the steamboat City of Hartford, her tackle, apparel and furniture, and engine, and against all persons lawfully intervening for their interest therein and against the steam-tug Unit, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the respondents, answering, allege and propound as follows:

First. These respondents admit by their answer the allegations contained in the first article of the said libel.

Second. These respondents, answering, state that they have no information as to the several allegations contained in the second article of the said libel, except that they admit that at or about the
61 time stated in the said second article of the said libel, the schooner Abbie S. Oakes was at anchor in Buttermilk Channel, in the port of New York.

Third. These respondents admit the several allegations contained in the third article of the said libel, except that they have no knowledge or information as to where she was bound.

Fourth. These respondents, upon information and belief, deny the several allegations contained in the fourth article of the said libel, except where the same are hereinafter specifically admitted.

Fifth. These respondents, upon information and belief, deny each and every allegation contained in the fifth article of the said libel, except where the same is hereinafter specifically admitted.

Sixth. These respondents have no knowledge or information as to the matters contained in the sixth article of the said libel, and therefore they deny the same.

Seventh. These respondents state that at about the time stated in the said libel the said steam-tug Unit took the said schooner in tow to be taken through Hell Gate, the tide at the time running flood; that she also took in tow another schooner or vessel also bound through Hell Gate; that the schooner Abbie S. Oakes was lashed to the port side of the said tug Unit, and the other schooner to the starboard side; that the course of the said steam-tug Unit was up along the Brooklyn docks and piers, and about seventy to one hundred yards therefrom; that when at a point at or nearly opposite the Fulton ferry, in the Brooklyn side, the steamboat City of Hartford was discovered half a mile or more ahead of the said steam-tug, coming at a rapid rate, and upon a line inside of the course of the said steam-tug and her tow; that immediately two whistles were blown by the said steam-tug, and her wheel, as well as those
62 of the vesssels, were put hard astarboard, thus indicating her intention of going to the left, and that the said steamboat City of Hartford blew two distinct whistles in answer to the signal of the said steam-tug, thus confirming the course intended to be taken by the said steam-tug; that the stem of the said steam-tug, as well as those of the said schooners in tow, gradually turned to the left, and angling toward the New York side; that the said steamboat City of Hartford, instead of starboarding and keeping to the left, seemed to have ported, and was in fact rapidly coming down upon the said steam-tug and tow; that when within a length or two of the said steam-tug, the said steamboat City of Hartford blew a single whistle, but at too late a period to allow the said steam-tug to change her course, and as the only alternative and the only proper course the bells of the said steam-tug were constantly and rapidly rung to slow, stop, and back, and which were forthwith obeyed: that the effect of backing and the flood-tide was to throw the head of the steam-tug and the said vessels to starboard, so that when

the collision actually took place the head of the said steam-tug and the said vessels were angling toward the Brooklyn shore, and the said steamboat City of Hartford kept on without stopping the onward motion of her wheels until within a very short distance of the bow of said schooner Abbie S. Oaks, and that she struck the port bow of the said schooner with her stern a very violent blow, crushing in her bow and sinking her in a very short time, (the headway of the said steam-tug and the said schooners having been at the time overcome) That the said collision happened solely by the carelessness, negligence, and unseamanlike conduct of those navigating said steamboat City of Hartford, and among other things in answering the signal of the steam-tug with two whistles and then not starboarding; in keeping on in a direction which would strike the bow; in blowing a single whistle when too close to avoid a collision; and in not stopping in time to prevent a collision.

63 Eighth. That with a full knowledge of the facts there ought to be no embarassment as to which vessel was in fault, and that it was clearly the said steamboat, and they therefore deny the allegations contained in the article of the said libel.

Ninth. That these respondents admit that the said vessel, freight, and cargo became a total loss; but these respondents have no knowledge as to the extent of the libellants' loss, and therefore leave them to make such proof as they may be advised is material.

Tenth. That these respondents neither admit nor deny the jurisdiction of this court.

Wherefore respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises, and that they may be here dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

S. THOMAS, *Agent.*

Sworn to before me this 4th day of October, 1870.

A. W. HALL,
Notary Public, N. Y. Co.

BEEBE, DONOHUE & COOK,
Proctors for Claimants of the Unit.

Filed Oct. 5, 1870.

64 United States district court, southern district of New York.

CHARLES ROBINSON
ag'st
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., &c.

It is hereby consented and stipulated that the answer in the case of Hudson S. Rideout and others against the above-named steamboat, pending in this court, be considered and treated as the answer of the City of Hartford in this case also.

Dated New York, Dec. 17, 1870.

SCUDDER & CARTER,
Proctors for Libellant.

Filed Dec. 17, 1870.

U. S. district court, southern district of New York.

HUDSON S. RIDEOUT AND ALS.
vs.
THE STEAMBOAT CITY OF HARTFORD, &C., and Steam-tug Unit, &c. } 22488.

CHARLES ROBINSON
vs.
THE SAME. } 22492.

(From rough minutes of October 12, 1870.

These causes being called in their order on the day-calendar, ordered that said causes be heard together.

65 Pleadings read.

EVIDENCE FOR LIBELLANTS.

William C. Strang sworn.
Adjourned to 11 a. m. to-morrow.

OCTOBER 14.—Causes continued.

Hudson S. Rideout sworn.
Diagrams Nos. 1 and 2 put in.
William A. Atwood sworn.
Diagram No. 3 put in.

EVIDENCE FOR CLAIMANTS OF CITY OF HARTFORD.

William D. Mansfield sworn.
Causes adjourned to Monday next.

OCTOBER 17.—Causes continued.

EVIDENCE FOR CLAIMANTS OF CITY OF HARTFORD.

William D. Mansfield, continued.
Diagram No. 4 put in.
Charles Reilly sworn.
Edwin A. Dibble sworn.
Causes adjourned to to-morrow.

OCTOBER 18.—Causes continued.

EVIDENCE FOR CLAIMANTS OF CITY OF HARTFORD.

Edwin A. Dibble, continued.
Edgar W. Brant sworn.
Henry B. Strickland sworn.
Diagrams Nos. 5 and 6 put in.
Charles H. Young sworn.
Hamlin Stannard sworn.
Henry B. Strickland recalled.
Causes adjourned to 11 to-morrow.

OCTOBER 19.—Causes continued.

EVIDENCE FOR CLAIMANTS OF CITY OF HARTFORD.

Albert Nelson sworn.
William H. Goodspeed sworn.

EVIDENCE FOR CLAIMANTS OF STEAM-TUG UNIT.

Deposition John Redmond read.
Deposition Jacob Bell read.
66 Thomas H. Riley sworn.
John R. Grace sworn.
Thomas Rockefellar sworn.
Causes adjourned to 11 a. m. to-morrow.

OCTOBER 20.—Causes continued.

EVIDENCE FOR UNIT.

Thomas Rockefellar, continued.
Peter A. Woljamuth sworn.
William J. Dalton sworn.
Thomas H. Riley recalled.
M'r J. H. Choate argues for libellants (Rideout and als.)
M'r R. H. Huntley argues for claimants of City of Hartford.
M'r C. Donohue argues for claimants of Unit.
M'r J. C. Carter argues for libellant (Robinson.)
Points to be handed to the court.
C. A. V.

Minutes of testimony taken by Judge Blatchford. (*Book No.* 12, *pp.* 85 *to* 156.) *Oct.* 12, 1870.

U. S. district court.

HUDSON S. RIDEOUT ET AL.
vs.
THE CITY OF HARTFORD AND THE UNIT.

CHARLES ROBINSON
vs.
THE CITY OF HARTFORD AND THE UNIT.

For libellant.

WILLIAM C. STRANG sworn.

Belong in Medfield, Mass.; am master of schooner Col. Jones,
67 now lying at Salem, Mass.; March 27th, 1869, I was in the port of New York with my vessel, the Col. Jones; I came in here on account of head winds; I was bound from Norfolk, V'a, to Boston; the night before the 27th I was anchored in Buttermilk Channel; I saw the collision between the Abbie S. Oakes and the City of Hartford that morning; my vessel was in tow of the Unit on her starboard side; the Abbie S. Oakes was on the port side of the tug; they were made fast to the sides of the tug; I supposed the master of the tug was in command of the whole thing; the tug took hold of us above Governor's Island about 6 a. m.

The wind was very light, hardly any when tug came alongside; weather fine; when tug took us in tow it was an hour or one-and a-half hours

flood; I have been here for ten years, every year almost; the tug was to take the schooner through the Gate to Riker's Island.

Somewhere above Fulton ferry, on Brooklyn side, between that and the turn of the river on the Brooklyn side, I first noticed the City of Hartford; I was on deck when we hove our anchor up and the tug-boat started us; after we got started I went below to get my breakfast; I left a man at wheel; I had not been below but a few minutes before I heard whistle of tug-boat—can't tell whether one or two blasts—but I knew by the blowing of the whistle by the tug-boat that there was some danger at hand, so I immediately came on deck; at that time my vessel was where I have stated, and about twice the length of my vessel from the Brooklyn shore, that is, about two hundred feet from end of piers on Brooklyn side; after I came on deck I saw the City of Hartford, and also heard her blow her whistle; the Unit had by this time reversed her screw and was going astern through the water; the Unit then blew her whistle again and the City of Hartford answered it; I can't remember what either of those whistles was; by this time we were pretty near together; after we got sternway on us I saw that my schooner's
68 head fell off towards the Brooklyn shore, and that the head of the tug and the other schooner did so also; when I first saw the City of Hartford I supposed she would strike the tug-boat between the two schooners; but as the schooners fell off toward the Brooklyn shore the City of Hartford struck the Abbie S. Oakes on the port bow of the Abbie S. Oakes pretty near the bowsprit; the City of Hartford came with a very little angle, not exactly straight, on to the Abbie S. Oakes.

I started from the cabin on first hearing a whistle from the Unit; I took my stand on port quarter of my quarter deck; I was from there to the wheel till the collision; I took my wheel immediately on coming on deck, after I saw the City of Hartford. and that she was likely to run into us.

When I came on deck, the tug and schooners were heading, I should think, a little off the Brooklyn shore. The City of Hartford, when I first saw her, was heading right for us, but she was up by the turn of the river and a little above it; we were below the turn.

When I came on deck tug and steamer were over one-fourth of a mile apart; the first thing I looked at was the City of Hartford; then I noticed the Unit blow its whistle again; my wheel being hard to starboard, which the man had put there just before I came on deck, I looked to see whether we were going ahead through the water, or astern through the water; that was the first I noticed that the tug-boat had backed; the backing turned the heads of our vessels towards the Brooklyn shore, and fetched them head on to the City of Hartford; they were still swinging at time of collision.

I observed the paddle-wheels of the City of Hartford; they were turning ahead until her bow got almost to the jib-boom of the Abbie S. Oakes; her stem not over ten feet from the jib-boom of the Abbie S. Oakes; then they stopped moving forward.

69 There was one whistle from Unit before I came on deck, and one after; I should judge a minute between the two whistles, and the same after second whistle before the collision.

My vessel was not injured; I had a five-inch hawser out; they parted that; the City of Hartford went into the Abbie S. Oakes; she sank in three or five minutes.

I observed no change in course of City of Hartford from time I came on deck till collision.

I took my wheel and found it hard astarboard; I put it hard aport: of my own motion I kept it so till the collision; did not notice wheels of tug and Abbie S. Oakes. When I saw we were going astern, I ported to sheer the vessel away from Brooklyn shore, which it had a tendency to do, to give City of Hartford a chance to pass on my starboard hand: I ported about time of second whistle of tug.

I heard whistle from City of Hartford; I think two—one as quick as possible after another; one signal of two blasts; I did not hear any whistle from City of Hartford till after I heard second whistle from tug.

I found my wheel hard astarboard, and in the rest; it took me quite a while to get it hard aport; I got it hard aport a half minute or minute before collision; my porting had no effect on movement of tug and schooners; they kept swinging all the same.

Cross-examined by City of Hartford:

I know the Fulton-ferry slip on the Brooklyn side; when I came on deck I was above that slip—I mean on the way up the river; when I came on deck the Fulton-ferry slip was off my starboard quarter; a little astern, about 200 feet from the wharves; we were pointing, may be, a point off from parallel with the Brooklyn shore; did not notice condition of tide at that time; it was flood-tide then; I think we had not
70 got up as far as the dry docks on the New York side when collision occurred; when I first saw the City of Hartford she was heading right for the tug between the two schooners—at that time, I should judge, she was ¼ mile distant. I judged the tug was backing because we were going astern through the water. The stern lines were taut—the head lines were slack, and we were going astern through the water. Our vessels were lashed together, and did not spread.

Cross-examined by Unit:

The two schooners' bows were both on a line with each other; they were very nearly of a size; the schooners' stems projected ahead farther than the tug's stem; about one-third of length of schooners was ahead of the tug; stern of tug was a little ahead of sterns of schooners—perhaps eight feet ahead. Don't remember whether there were lines from one schooner to the other schooner. There was no time that I noticed that she was turned towards the Brooklyn shore, after she passed the point. The tug continued to back all the time after I first noticed her backing. The City of Hartford came pretty fast.

Redirect:

I did not, just before the collision, hear three whistles blown by the City of Hartford.

OCTOBER 14TH, 1870.

HUDSON S. RIDEOUT sworn:

I belong in Bucksport, Maine; I am one of the libellants; I was one-fourth owner of the schooner Abbie S. Oakes, and master; she was sailed on shares by myself and my mate, William Atwood; he and I owned the stores and other fixings on board, and had an interest in the freight money; the rest of the vessel was owned as stated in the libel.

We started from Baltimore the Sunday before March 27th:
71 March 27th was Saturday; had a cargo of corn in bulk, bound to Portsmouth, New Hampshire; she was full; she had 4,850 bushels of corn aboard then; bill of lading to Robinson & Son; corn consigned to them; we came into port of New York on account of weather; I hired the tug Unit to tow me through Hell Gate.

The Unit came alongside in the morning, I should say about 6 o'clock; I made a bargain with him to take me through the Gate—with her master; they called him pilot; he went then a short way up the river before taking me, and took the schooner Col. Jones in tow; the tide ran flood; he came back with the Col. Jones on his starboard side and made fast to me; I on port side of tug; each schooner was made fast to the tug separately, and there was a breast-line from one schooner to the other outside of the tug, in front, about 25 to 30 feet ahead of the stem of the tug; we had a tow-line from the tug forward near her bows, abreast of pilot-house, to our starboard quarter, to a cleet; she had a bow-line from the tug-bitts forward to our foremast; a stern-line from her bitts aft to our port-quarter; the stern of the tug extended about eight feet further aft than the stern of my schooner; my schooner was shorter than the Col. Jones; my schooner was 68 feet long; my vessel was higher out of water than the tug. My quarter-rail was three feet higher above water than the tug's rail aft alongside of me; I did not notice height of the Col. Jones relatively.

We hove up anchor and winded round, and proceeded up towards the Gate. There were four on deck of my vessel—I, mate, steward, and one man; I stood aft; the wheel was set two spokes against the tug and left, two spokes to port, to incline her to hug the tug; we proceeded up, and in vicinity of Fulton ferry, on Brooklyn side, we saw a steamer coming west; the tug blew two whistles and the steamer answered with two; part of the space between steamer and tug had lessened when
the pilot of the tug ordered me to put my wheel hard astar-
72 board; this was after the four whistles; I put my wheel hard astarboard myself; very soon the tug rang her bells—one bell, then a space, and then another bell, and then two more bells together, four strokes of the bell in all on the tug—very short space between first and second bell, maybe half a minute. (By watch, eleven seconds between first bell and second bell—five seconds between second bell and the last two bells.) The steamer, at the same time, appeared to me to be coming head on to the Col. Jones; our way was stopped through the water; the tug-boat was backing; at the same time the sterns of the tug and two schooners, as she backed, were swinging into river to westward—their heads swung towards Brooklyn shore, the steamboat still coming ahead, till her stem was nearly up to our jib-boom; I mean her wheels revolving ahead; she struck our port bow, cutting windlass in two—cutting our beams up to foremast, laying us open; we took to our boat; our schooner soon went down—I should say in three minutes after the blow; the blow parted the three lines from us to the tug, and the line from us to the other schooner.

I should think we lay about 200 yards from Brooklyn shore when we weighed anchor; we winded around to eastward when we winded around; when I came in sight of steamer we were nearer to Brooklyn shore than 200 yards; when I came in sight of steamer my vessel was not over 75 to 100 yards from Brooklyn shore; I was outside; my vessel was 22 feet wide; don't know width of tug or of Col. Jones; the Col. Jones was larger than my vessel.

When I first saw steamer I saw her upper works; I saw her over the wharves at the point; could not then see her hull; she was a little above the turn; at that time, and before I starboarded my vessel, I and the tug were heading parallel with the Brooklyn shore; I should think
that there was then about four points difference between course of
73 steamer and of us; I think we were running about NE. $\frac{1}{2}$ N., and she was heading four points to the westward of the opposite of

our course; that is about W. ½ S.; she was above the turn then; I think she struck nearly off the turn; I think my vessel was not 50 yards from end of pier on Brooklyn side when struck—that is, my bow; after I starboarded my vessel changed very little to port, those bells were rung so soon afterwards; they did not begin to fall off to port before the backing began; I kept my wheel hard astarboard until the collision; that was the only order I received from captain of tug until the collision, except one other—that was to jump for our lives.

When the tug gave her two whistles, the steamer was not over one-eighth of a mile off; we were going six knots by land when whistles were blown, and the City of Hartford was heaving the water up two feet forward of her stem; when I came in sight so I could see her bow, I saw this water two feet high. After the tug blew and the City of Hartford answered, I had no idea of any danger; we were within 300 feet of the City of Hartford, when I first had an idea of danger; when the tug rang her first bell the City of Hartford was 400 feet off, I should say; the starboarding made her swing to port not half a point; then after the bells to back, we began to swing head to starboard and swung a little more than four points before the collision; it was a steady swing to starboard all the time after the backing till we struck; the hard astarboard order was given and then immediately the four bells were rung.

I did not observe any change in course of City of Hartford from time she came in sight until the collision; I think she was running W. ½ S. at the time of collision.

I did not see anything to west of us in river, between us and New York shore; we had passed vessels at anchor; I did not notice anything above us in river on steamer's starboard side; I think it was about a mile from where we were took in tow to place of collision.

74 We were going up to lower line of Fulton-ferry slip on Brooklyn side when tug whistled; when blow was struck, Fulton-ferry slip on Brooklyn side bore over my starboard davit; I was standing at the wheel then.

Cross-examined by Unit:

The wind that morning was to the westward—a very light air—pleasant morning. I had not left my deck from time tug took me in tow till collision. Before I heard the two whistles from tug I heard no whistle from either vessel. The two whistles of tug were blown about the time the steamer hove in sight. It was a very short space after the two whistles were blown by tug before the two whistles were blown by steamboat (by watch it was three seconds after tug blew that the steamer blew.) The order to hard astarboard came after the City of Hartford answered, and when half the distance that the boats were apart when the tug blew her whistles had been run over.

At the time the order came to hard astarboard the vessels were, I should say, 600 feet apart. So far as I was concerned that order was promptly obeyed. I observed wheel of tug after she was backing, and it was hard astarboard. I could not see wheel of Col. Jones. As long as there was steerage-way on my vessel, going ahead, starboarding helm would throw my head to port. Order to starboard came, and the next thing that was done was ringing the bells (by watch it was five seconds between order to starboard and first bell.) Whatever way to port was made by starboarding helm was made before her steerage-way was overcome. When I saw first indication in backing to swing to starboard the vessels were not much more than 200 feet apart. At that

Diagram No. 1.

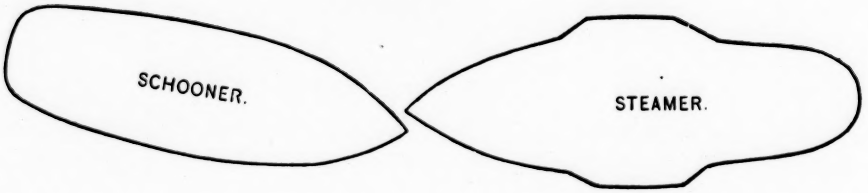
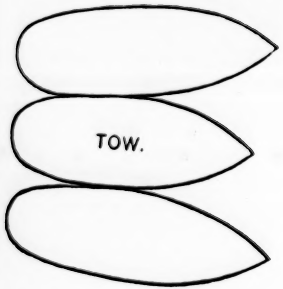
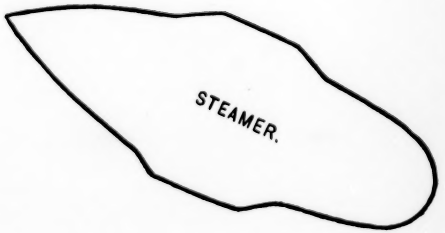


Diagram No. 2.



Somewhere from 400 to 600 feet apart.



time the City of Hartford was heading for the Col. Jones; I saw that the City of Hartford had slowed, but her wheels revolved ahead until her stern reached our jib-boom.

After the response whistle from the City of Hartford, I heard no whistle from either boat up to the collision. When the City of Hartford was 600 feet off, I thought she would clear us. I thought
75 she would pass to our starboard. When we struck the tide was running by us. My vessel did not swing away from the tug before the blow. I did not notice the Col. Jones. When we swung to starboard the whole tow swung. There was no time after the tug commenced to back under the four bells when her engine went ahead again.

Cross-examined by City of Hartford:

When 600 feet off I starboarded, and the City of Hartford was heading for the Col. Jones. The City of Hartford could have gone clear of us to starboard, though close. At that time I was 75 to 100 yards from the Brooklyn piers. I didn't notice anything between us and the Brooklyn piers.

Cross-examined by Unit:

I could see no change in the course of the two vessels till the change came by the tug's backing. The courses continued the same until changed by swinging of tug. When bells rung the City of Hartford was heading for the Col. Jones; that heading was at nearly four points, as I said before; that angle was overcome by backing and swinging of tug. The stem of the City of Hartford first covered Col. Jones, then tug, and then my schooner.

Cross-examined by City of Hartford:

When tug rang to back the City of Hartford was swung into Brooklyn docks 50 to 75 yards from ends of piers.

We swung the four points while the City of Hartford was coming between 300 and 400 feet.

When the City of Hartford so headed for the Col. Jones, when the bells were rung, she headed for the starboard cathead of the Col. Jones. I did not then notice her after her paddle-boxes. I could see from the bow of the City of Hartford to her paddle-boxes.

The vessels were between 400 and 600 feet apart when the bells rang to back, and the City of Hartford was heading for starboard cat-
76 head of Col. Jones. At that time my vessel was 75 to 100 yards from Brooklyn shore, and the City of Hartford was 50 to 75 yards from Brooklyn shore I should say.

(Makes diagram of City of Hartford pointing to starboard cathead of Col. Jones, and when they were from 400 to 600 feet apart, No. 2. Diagram No. 1 is the way the vessels came together.)

Before bells rung to back we were going 2½ knots through the water, and I should say six knots by the land.

WILLIAM ATWOOD sworn:

I am one of the libellants. I sailed the Abbie S. Oakes on shares with Captain Rideout. I was on board of the Abbie S. Oakes, on her deck, on morning of collision. I was mate; was on deck from time tug took the Abbie S. Oakes in tow till collision; have followed the sea eleven years; have been mate of the Oakes about four months.

I became aware the City of Hartford was coming a minute before tug blew her two whistles. The tug blew two whistles and the City of Hartford blew two in answer. The captain of tug told our captain to put

his wheel to starboard; he did so. She was heading very near for us, and I perceived we stopped going through the water. I heard no bells. She was not but a little way off then. We swung but a very little towards the Brooklyn docks—our head; then she struck on our port bow, between bowsprit and catheads, and cut us in about 12 feet. Our vessel went down in about three minutes.

I stood forward on the port side till just before she struck, when I walked aft. I heard no whistles from either vessel except the two from the tug answered by the two from the steamer.

When tug took us in tow we were 200 to 300 yards from Brooklyn shore. When tug whistled we were 75 yards from Brooklyn shore from ends of piers, and when collision occurred about the same.

It might have been two minutes from tug whistling till vessels
79 came together. It was very soon after tug whistled that I heard the order to hard astarboard. Can't say whether our vessel fell off to port after order to hard astarboard. It was very soon after that order that I saw our headway was stopped. I did not see our vessel swing. I watched the City of Hartford. I did not at any time see that our vessel was swinging. I noticed after we struck that we were heading more to the Brooklyn shore, but I supposed it was the clip.

I think the City of Hartford swung a little mite to us after she blew her whistles. The effect of it was to bring the vessels a little more in a line. The change was a point or a point and a half. When they struck, the two vessels angled about a point.

When I first saw the steamer I saw her perfectly clear. At that time we were going about N. E. ½ N., and the City of Hartford angled about a point to us. The place of collision was about abreast of the turn in the river.

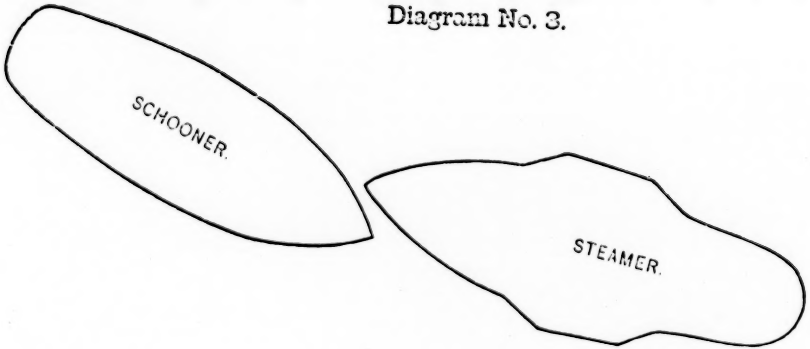
I kept my eye on the City of Hartford. Her wheels were moving ahead till she got within thirty feet of our bow. I saw her bows. She was going very quick through the water.

Cross-examined by City of Hartford:

I went forward as soon as we started. I did not notice at any time how fast we were going through the water. When I first saw the City of Hartford she was heading out by our vessels for the New York side; not for them; perhaps a point or half a point. At that time she was two or three times her length off; about 800 or 900 feet. It was at that time that the tug whistled, as near as I can judge. The whistles signified for the City of Hartford to starboard, and go in toward the Brooklyn shore, and the City of Hartford answered. The City of Hartford blew as soon as the tug blew, when they were near 700 feet apart. When I said that the City of Hartford seemed to swing nearer to us, I mean that her bow seemed to swing toward the Brooklyn shore. It was pretty soon after the tug blew her whistles that the City of Hartford commenced to
80 swing. I can't tell whether she continued to swing till the collision. When I first saw the City of Hartford I saw the forward part of her, on her port side most distinctly. I did not see her wheels stop revolving forward. I saw her wheels revolve forward until she was within thirty feet, and I saw no more of them after that; then I lost sight of them. When I lost sight of wheels of City of Hartford I can't tell which side of her I saw most distinctly. Our rail forward caused me to lose sight of her wheels at thirty feet off our bulwarks. We were loaded with corn; none on deck.

The Abbie S. Oakes was rebuilt in the fall of 1868. I don't know how old she was; did not know her before. The lines which parted were new when she was rebuilt.

Diagram No. 3.



Shows the way the vessels came together.

Cross-examined by Unit:

I heard no whistles but those four at any time. I did not at that time notice there was a bend in the shore. I did not notice before the collision whether the sterns of the schooners swung about any. My vessel had no sail on her. The vessels were perhaps once the length of the City of Hartford apart when I thought there would be a collision; can't tell whether that was before or after I noticed we had stopped. I did not observe by the land whether we had stern-way on. I gave no attention to anything except the forward movement of the steamer. I am certain her wheels were revolving ahead at the distance of thirty feet. I was standing about at our main hatch at instant of collision; blow cut through our bow timbers; lines parted by the blow. When she struck I was facing forward. I heard the order to starboard. She came into us at an angle of about a point.

(Diagram No. 3 shows how they came together.)

WILLIAM D. MANSFIELD sworn:

Am a pilot; been so nearly 15 years; been engaged for the N. Y. and Brooklyn Ferry Company most of the time; running between Roosevelt street, New York, and South Seventh street, Williamsburgh, on a ferry-boat.

82 Recollect this collision. I was on the ferry-boat Commodore Barney at the time; was going from Williamsburgh to New York. I first saw the City of Hartford that morning when I came out of the slip at Williamsburgh. She was then over at the New York side, between Grand street and Corlear's street, just off point of Corlear's Hook. She came down to Jackson street and cut across toward Brooklyn shore, and we cut across right after her.

We kept a little way astern of her; were perhaps 50 yards astern of her when we crossed over. She beat us a little; we went over closer to Brooklyn side than she did. We were not exactly in her wake; we ran down along Brooklyn shore. When we were about abreast of Catharine ferry the City of Hartford was about 100 yards ahead of us, and about 50 yards further off shore than we were. Then I heard two whistles from some boat down the river; did not see the whistles or the boat. I immediately heard two from the Hartford; I saw those. I then saw that the City of Hartford slowed and hove her wheel astarboard. I then heard one whistle from the boat, or whatever it was, down below; had not seen it; did not see that whistle. I then stopped my boat, and about that time the City of Hartford stopped and blew two whistles; I saw those. I mean by she stopped that her wheels stopped going ahead. Then the City of Hartford commenced to reverse her engine—to back. I saw her wheels backing; then I saw a tow coming up from below. The tow appeared to be heading in towards the Brooklyn shore. I backed up out of the way. I saw there was likely to be a collision. I was piloting the Commodore Barney; was in my pilot-house. They came together; one schooner got fast to the City of Hartford and the other ran clear. The tug backed out from between the two schooners; the schooner that was not afoul anchored, and I went ahead and went into the slip.

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I am positive I heard the City of Hartford blow two whistles just before she backed. There were not three whistles blown by her at that time—that is, after she stopped and before she commenced backing. I did not hear the City of Hartford whistle after those two whistles. I did not hear a whistle from either boat after these two whistles from the

City of Hartford. I noticed the distance between the City of Hartford and the tow at the time the City of Hartford began backing. I should judge it to be about 150 feet. I was about 300 feet from the City of Hartford, right off abreast of her quarter, when she began to back. My bow was abreast of the Hartford's port quarter at that time. The tow at that time was 200 feet or a little more from me at that time; nothing to obstruct vision between me and tow at that time. When the City of Hartford began backing she was about 150 yards from the Brooklyn shore.

After the City of Hartford got down by the Brooklyn shore she was heading about S. W. by W. ½ W.; heading about for between Fulton and Wall street ferries on the New York side, for the docks. She was about off Bridge street, Brooklyn, when she took this S. W. by W. ½ W. heading; that was about parallel with the Brooklyn piers. I observed the City of Hartford change her course just after she passed Main-street slip, Brooklyn; just as she was running by the slip she began to haul off towards New York. Up to that time I had not heard any whistle from any source. Maybe fifteen or twenty seconds after I noticed the City of Hartford begin to haul to the west, then I heard the two whistles from the boat below, which I could not see; she was not in sight. Two whistles in quick succession—I mean one signal of two whistles, not two signals of one whistle each. They indicated to go to the left. After that I noticed a change in the City of Hartford. After the two whistles from the tug the City of Hartford answered by a signal
84 of two whistles. Then I noticed that the City of Hartford was swinging again to the southward from the westward, hauling back from the westward towards the Brooklyn shore. She had hauled over to the westward, and she was hauling back. The swing from the westward to the southward was gradual. I thought it was as sharp as she could give, on account of her having before a swing to the westward. Her wheel, while she was swinging to the westward, was put hard astarboard. When I heard the two whistles from the boat below, the City of Hartford was then on a swing towards New York. When she answered the two whistles she was still swinging towards New York.

The City of Hartford began to back that I saw her wheels begin to reverse just about the time I caught sight of the tow. Before the collision I think the City of Hartford made three or four turns back. When I first saw the tow, the tug and the two schooners were pointing toward Brooklyn.

When I began backing I was about three hundred feet inside of the City of Hartford, and on her quarter. When I saw the City of Hartford backing I commenced backing, to get out of the way, too.

The bend in the river, and docks and vessels above Fulton ferry, on Brooklyn side, and the point in the river, prevented my seeing the tug before I did. Before the City of Hartford slowed she was going eight or eight and a half knots.

At the time the City of Hartford hit the schooner, she did not seem to be passing the land any. I saw them hit; I was in the eddy, and they were out in the flood-tide. I drifted down to them.

I was about four hundred feet from the place they hit. I looked out of my forward starboard quarter window straight at the point of collision, over my starboard bow. The tow did not appear to be going much through the water; she was coming up with the tide. The tide was running about four knots.

Cross-examined by Unit:

The City of Hartford was just about abreast of my slip when I

85 ran out. It was South Seventh street slip. It is one-quarter to one-half mile above navy-yard. I came out on a starboard helm, hard astarboard. I ran about two-thirds of the way across the river before I got straightened down. The City of Hartford was then, may be, two hundred yards ahead of me; I was about in her wake. I hauled in to the westward of her after that, to a line about one hundred yards to westward of her; then she crossed over to Brooklyn side, and I did also, under her stern.

The City of Hartford is a little over three hundred feet long.

The City of Hartford had reached just below Catharine ferry when she hauled to westward. Up to that time I had retained the same distance from her. I was running along about eight knots, and the City of Hartford the same. Between Catharine ferry and point of collision is about two hundred yards distance.

The City of Hartford, on her sheer to westward, changed about three points; I did not change with her. On that sheer she ran about fifty yards; then came the two whistles from down below. The three points brought her to W. ½ S.; she was heading about W. ½ S. when the two whistles from below blew, and swinging. Up to that time I had not gained on her from the time I straightened out.

At the time she broke this sheer to the westward she was nearly up to abreast of Marston & Powers' coal-yard. I think she changed her course on her starboard wheel about three points, and to about S. W. by W. ½ W. She had just begun to swing to southward when I noticed she had slowed.

Between time she broke her sheer and the collision I don't think she went her length by the land. I have never been pilot in a boat as long as she.

I don't think after she got her wheel hard to starboard she went over 100 feet before I perceived her sheer to the westward was broken. As soon as I observed she had sheered to southward I slowed and
86 stopped. I gradually gained on her from then, being in eddy. When I saw the City of Hartford begin to back I began to back. The City of Hartford ran about fifty feet between time I noticed her slowing and time I saw she had stopped. When I began to back I was on her port quarter; my stem just lapped on her port quarter—say twenty-five feet; my pilot-house is thirty or forty feet back of my stem.

The first time I saw her slow she was on her sheer to the southward.

At collision, the City of Hartford was about abreast of Marston & Powers' yard; her stem was a little below that and about 150 yards from the dock. When I first saw the tow I saw at the same time that the City of Hartford was backing. At that time the head of the tow was towards the Brooklyn shore, and after that she gradually swung more towards the Brooklyn shore.

Cross examined by libellant:

The City of Hartford did not go down in the middle of the river. I saw nothing to prevent her coming down in the middle of the river. After she got down past Main street, on Brooklyn side, she began to sheer to westward to go to her own slip. She was bound to slip between Piers 24 and 25. At the time the City of Hartford sheered to the westward from where she was, that was a proper sheer for her to reach her place of destination—her slip—with the tide as it was then. She runs by her pier and gets out a stern line, and works into slip stern foremost.

The last two whistles I heard from the City of Hartford were just

about the time she backed. After the other boat had blown one whistle I heard no other whistles from the City of Hartford than those I have stated.

The City of Hartford was out in the tide.

The strength of the eddy is 1½ or 2 knots; the flood-tide is between 4 and 5 knots.

87 CHRISTOPHER REILLY sworn:

I am a steamboat pilot on route from Hunter's Point to James Slip; been so eight years and a little over. Recollect this collision. I first saw the City of Hartford coming down the river off Hunter's Point. I was coming out of the slip at Hunter's Point, coming out after her. I was on the Suffolk County as pilot. I followed the Hartford down; she took the channel tide, and I took the eddy tide on New York shore. She went in middle of river, down to Corlaer's Hook. When she was at Hook, I was about 300 yards astern of her, and close in under docks on New York shore.

I saw the City of Hartford cut over towards Brooklyn. When she got opposite Bridge street, Brooklyn, she straightened down river. She went down the Brooklyn shore, from about 100 yards to 150 yards off the docks. Down a little below Catharine ferry, I saw her sheer towards New York, to the westward; then I saw her alter her course, in towards Brooklyn, and stop and back; then I saw a tug turning Fulton Ferry; then I hove off into the river, so as to keep clear of the collision. I supposed, when I saw them, the tug and the city of Hartford must have been 150 feet apart. When the tug came in sight, I saw them come in together. I saw the City of Hartford backing before I saw the tow.

I think the City of Hartford was going eight or nine miles by the land before she stopped and backed. I was too far behind to tell how fast the City of Hartford was going at collision.

I heard whistles, but can't tell what they were or who they were from.

Cross-examined by libellant:

I was going about same speed as the City of Hartford. At time of collision the City of Hartford was three hundred yards ahead of me. I was on the Brooklyn shore then. The Commodore Barney was between me and her; nothing else.

88 I was about forty yards from docks on Brooklyn shore at collision. The City of Hartford was one hundred and fifty yards off Brooklyn docks at collision.

When I saw the City of Hartford backing, I was on Brooklyn shore, and then I sheered over towards New York. I saw the City of Hartford sheer towards New York, and then I saw her sheer towards Brooklyn and saw her wheels reverse. I did not see the tug when the City of Hartford began to back. After that I saw the tug turn the point above Fulton Ferry on Brooklyn side; was too far astern to tell how many points City of Hartford sheered to the westward. When she sheered to the southward she brought into my sight her wheel on port side, and I saw it backing.

I followed the City of Hartford over to the Brooklyn shore. She did not cut across as sharp as I did. The Commodore Barney was a little closer in to the docks than I was; she stopped and I did not; we were all heading about S. W. by W. ½ W.

I can't tell how much the City of Hartford sheered towards Brooklyn; it was a pretty quick sheer—pretty fast sheer.

The tide was setting up all of four knots that morning.

Cross-examined by Unit:

I came down along New York shore from 16th street.

Redirect:

The City of Hartford did not get into the eddy along Brooklyn shore; she was out in the tide. The Commodore Barney was closer to Brooklyn docks than I was.

EDWIN A. DIBBLE, sworn: I am a steamboat pilot; was on board City of Hartford at time of this collision. I was pilot of her and had charge that morning; had been pilot on that route going on six years.

89 The City of Hartford ran from New York to Hartford. Her landing place at New York is pier 24 East River; the upper side of 24, between that and 25. She is about 280 feet long.

On morning of this collision a Sound pilot named Strickland, and two wheelsmen, Nelson and Young, and myself were in the pilot-house. We were going six to eight knots on an average that morning after getting through the Gate. Before getting through Corlear's Hook we were about midway of the river, stemming flood-tide.

When abreast of Hook we were a little nearer New York shore than the middle, other shore. When we were abreast of Hook we took tide on starboard bow, and that cut us over towards Brooklyn. I don't recollect meeting any vessels particularly till we turned Hook; there I saw below the Hook a tug with a lighter or sloop of one mast over nearest New York shore. I went to left of her, towards Brooklyn shore. That brought me over to neighborhood of Bridge-street ferry, Brooklyn, when I was furthest over towards Brooklyn. At Bridge-street ferry I was from 300 to 500 feet from the ends of the piers on Brooklyn side. We were then in the tide-way—not in an eddy. At that time and place we were going six to seven knots by the land. When nearly down to Catharine ferry, then I told Strickland to let her work over towards New York shore. I was then 300 to 500 feet from Brooklyn shore. Strickland spoke and said there's a tow coming; then I looked and saw the spars across the point of Fulton ferry. As soon as I saw the head of the tow opening so as to see the bows of the tow past the land, I gave one whistle. That signified that I wished to go to the right—to keep my course towards New York. When I blew the whistle I was 1,200 to 1,500 feet from the tow—from three to four times the length of the boat. When I blew that whistle I was heading but a little off Brooklyn shore, nearly parallel with it. When I so spoke to Strickland the wheel was a little to port, and she was grad-

ually working from Brooklyn shore. When I blew the one whistle

90 she was still swinging and working off towards New York. After I blew the one whistle I received a signal of two whistles from the tug. That was very soon after I blew my one whistle—not five seconds after. Between time I blew the one whistle and her giving her two I was gradually sheering towards New York. Those two whistles were the first I heard from the tug. I immediately answered the two whistles, and gave two whistles, and rang to slow—not to stop. I rang one bell, and my wheel was hove hard astarboard. I blew the two whistles, and rang to shut off, and hove wheel to starboard as quick as I could after receiving the two whistles. Four of us helped to heave the wheel to starboard. The two whistles from tug signified to me to go to left—to starboard wheel. After I got wheel hove to starboard I heard one whistle from tug, which I immediately replied to with three. I had broke sheer, and made, perhaps, one point sheer towards Brooklyn shore when I heard the one whistle from the tug.

When I heard the tug's first two whistles she was heading a little across our bow towards New York. I then could see the bows of the two schooners and the starboard side of the starboard tow.

When I heard the one whistle from the tug they were changing and sheering towards Brooklyn.

I blew the three whistles myself—pulled the lanyard with my own hand. Then I immediately rang to stop and back—three bells—one to stop and two to back.

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When I rang the three bells the heft of the tow was on my starboard bow; we were pointing for about the starboard schooner's bow. At that time we were about three hundred feet from the starboard schooner's bow, a little more than the length of my boat, from once to twice our length; our length is about 280 feet. When I rang to stop and back our sheer to starboard was broke, and we were swinging to the southward. At that time the tow was swinging to the southward the same that we were.

91 If, when the tug blew her two whistles, which caused me to break my sheer to the westward, I had kept on my port helm and kept my sheer still to the westward, and not starboarded my helm, I might have cleared the tow. I could not tell beforehand what the other boat might have done.

If I kept on in spite of her whistles, she acting on her own whistles, and going to my starboard, there would have been a collision; I could not have avoided it.

I noticed no change of course in the tow from time I first saw her up to the time she gave her own whistle. When I first could see how the tow was heading, she was heading for the New York shore, I judged, so as to strike about half-way from Corlear's Hook to Pike slip.

When I heard the tug's first whistle I observed she was swinging towards the Brooklyn shore, head towards us; when I saw this she was a little more than once the length of our boat off—perhaps not twice; the tug and tow were then in the tide-way, and we were also.

After I rang to stop and back I perceived that our headway was slacking all the while, and supposed the bells were obeyed.

In my judgment at collision our way by the land was nearly done; our sheer was then tending towards Brooklyn. At the time of collision I was heading a little on to the Brooklyn shore. We struck not exactly head and head, but at angle on her port bow. I continued backing till we came together; when I found we had cut her down to the water's edge I stopped backing and lay by her three or four minutes.

I could not tell whether at time of collision the tow had any way through the water. I should judge she was moving past the land to the eastward with the tide. The tug went out stern first from the tow from both schooners.

After the tug blew her one whistle I could have done no more than I did do to avoid the collision.

92 After the tug blew her two whistles I now know of nothing more I could have done to avoid the collision than I did.

Cross-examined by libellant:

The collision was very nearly abreast of the coal-yard, to the eastward of the caisson on the Brooklyn shore; our pilot-house was abreast of that coal-yard.

The place of collision was about six hundred feet further to the eastward than the place where the bows of the tow were when I first saw

them; and my bow was about six hundred feet eastward from place of collision when I first saw bows of tow.

I did not shift helm to go over to the Brooklyn shore. Our course when turning Corlear's Hook was heading for Catharine ferry or Brooklyn, and I did not port helm to keep in middle of river, but kept on my course and let the tide lee bow us over to Brooklyn shore; that is the usual course.

EDGAR W. BRANT sworn:

Engineer of steamboat; was engineer of City of Hartford at collision. I recollect the signals the pilot gave me on our passage down that morning; they were to shut off, to stop and to back. I received one bell to shut off. On receiving that, I shut her off. I was handling the engine myself. After I had shut her off, I received next signal in little less than a minute; as near as I can recollect that was one bell to stop. I stopped the engine within one or two seconds—as quick as it could be done. I received the next signal just as soon as they could ring the bell—that was two bells to back. I backed; I backed till they rung to stop—probably six or seven turns, till they rung to stop. I felt the jar of the collision—felt her hit something; must have made about four turns after we struck; can't tell exactly; maybe not so many. I think, if I recollect right, I made three turns before we struck. I stopped backing immediately on hearing the bell to stop backing.

It was flood-tide that morning.

93 I answered these signals as quickly as I could; as soon as anybody could do it, I think.

Cross-examined by libellant:

When the bell to stop rang, I unhooked her and dropped the valves, and that stopped the engine.

Before I received the bell to shut off, we were making about 15 revolutions a minute; had been making that rate since one o'clock that night; that is about the usual rate from Hartford.

HENRY B. STRICKLAND sworn:

Am a pilot on sound; been steamboat pilot thirteen years; was on the City of Hartford at collision; was in pilot-house at wheel. I was at the wheel when going through Hell Gate. After going through the Gate, I did not leave the wheel at any time till the collision. There were four in the pilot-house.

I was in her employ as Sound pilot, in charge from Riker's Island to Saybrook Bar; attached to her all the time for two years. Dibbell was in charge of her from Riker's Island to her dock in New York. I go in her from New York to Hartford, and live on board—attached to her regularly.

That morning we came down in middle of river all the way from Hell Gate to Corlear's Hook; then we went over a little the nearest to the Brooklyn shore. There were tows and vessels above the Hook all along. There was one small tow going up below the Hook—a small tug, with a sloop in tow. We passed to our left of her; we left her on our right hand. After we left her, we ran down pretty near to point on Brooklyn shore at Fulton ferry. We passed about 150 to 160 yards from the ends of the Brooklyn piers as we went along. At about foot of Jay street we straightened down at about 150 to 160 yards from the ends of the piers. The point of Fulton ferry, on Brooklyn side, pretty well obscures vessels below. We were running then at about 6½ knots.

We ran along about 150 or 160 yards from ends of piers to about Catherine ferry, on the Brooklyn side; then I saw this tow coming.

94 I was heading then the same course I had straightened on at Jay street; that was a heading for very near Wall-street ferry on New York side, a little to the southward of it, if anything. I first saw the masts of the schooners over the point. As soon as the tug opened out by the point Captain Dibbell blew one whistle. I got a response of two whistles from the tug-boat—a signal of two whistles; then I hove our wheel to starboard and gave two whistles. When we gave the two whistles we shut off our boat. Then they blew one whistle from the tug-boat; then we blew three whistles, and stopped our boat, and backed her. I knew the bells were rung to stop and to back.

When the bells were rung to stop, the City of Hartford was very near her length off from the tow, that is, when we commenced backing we continued to back; no signal to stop backing before the collision.

When I first saw the bows of the tow clear of the point, she showed her starboard broadside. She was at that time 1,600 to 1,700 feet from the City of Hartford. She at that time bore a little off our port bow—half to three-quarters of a point off our port bow. The tow had not changed her course any when she blew the two whistles.

When the tug blew her one whistle, we were 600 feet apart; she at that time bore about a point, or one and a half, on our starboard bow. After we commenced backing, the tug kept swinging to the southward; the City of Hartford swung about a point to the southward on her starboard wheel.

If the tug, after she had blown her two whistles, had kept on the course she was then on, heading towards New York, the City of Hartford starboarding as she did and swinging to the southward, there would have been no collision. After I had starboarded on receiving the two whistles, in case the tow had kept her course there would have been no collision.

If the tow had kept the course indicated by her two whistles there would have been no collision.

95 I heard the whistles given by our boat. I heard the two whistles given in response to the tug's two whistles. I heard the three whistles given by our boat—the signal of three whistles.

With the manœuvres adopted by the tow, there was no way in which the City of Hartford could have prevented a collision.

Cross-examined by libellant:

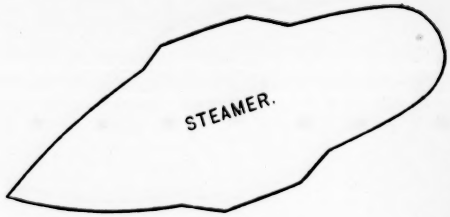
Hartford to New York is about one hundred and sixty miles by water. We left Hartford 4 p. m.; we make twelve to fifteen different landings coming down river. We left Saybrook bar that night 9.55 p. m.; from there to New York is about ninety-five miles; we reached our dock that morning about 7 a. m.

The collision was about abreast of coal dock above Fulton ferry.

When the tow opened out first so I could see her course she was heading considerable across our bow toward New York shore; she was heading near N. E. and we W. ¼ to ½ S. At that time our wheel was a little to port, just enough to keep her steady. It was about time for us to haul over towards Peck slip. After we saw the tow open, nothing was done to our wheel before starboarding except enough to keep her steady.

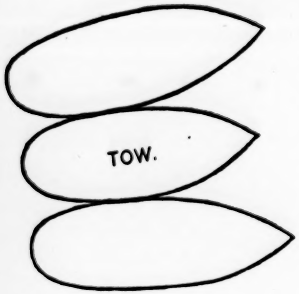
I did not observe any change in direction of tow until after she blew her two whistles. In half a minute or so after that I observed her changing towards Brooklyn shore. That was before she blew her one whistle.

Diagram No. 4.



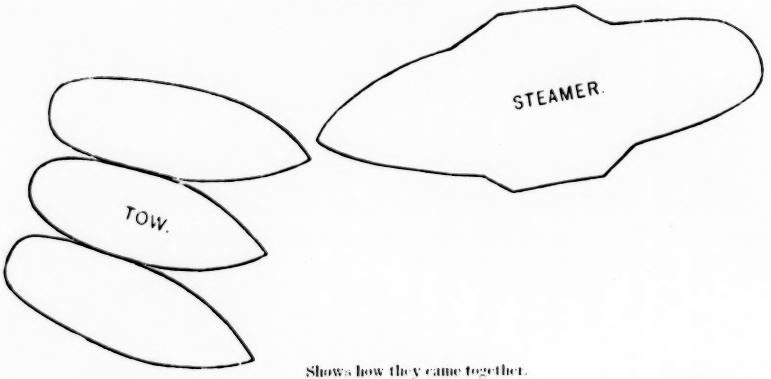
Relative positions when the two first opened to the witness clear of the point above Fulton Ferry.

Diagram No. 5.



Relative positions when the Tug blew her one whistle.

Diagram No. 6.



Shows how they came together.

She changed, in all, towards Brooklyn shore, probably more than four points.

(Diagram No. 4 shows relative positions of the two boats when the tow first opened to me clear of the point above Fulton ferry.)

A change had taken place in the relative positions of the two at the time the one whistle was blown by the tug.

(Diagram No. 5 shows the relative positions of the vessels when I heard the one whistle from the tug.)

99 The tug had at that time changed some to the southward, and the City of Hartford had sheered some toward the Brooklyn shore. The tug, I should think, had changed the most.

(Diagram No. 6 shows positions at collision.)

It was one and a half or two minutes after I saw the tow clear of the point until the collision. Between the tug's two whistles and the tug's one whistle might have been a minute. I could not tell anything about it. When I heard the one whistle from the tug the vessels were 500 or 600 feet apart, or it might not have been more than half that distance.

If I had received no whistle from tug I should have blown one whistle and put my helm to port immediately.

The tug's two whistles followed our one whistle sufficiently soon to be considered an answer.

We passed 300 feet to southward of the tug with the sloop.

CHARLES H. YOUNG, sworn:

I was wheelsman on City of Hartford and in her wheel house at time and at wheel; been wheelsman three seasons. I took the wheel at Riker's Island. I was at the wheel going down through the Gate. After arriving at Corlear's Hook we took a position in the river nearer to Brooklyn shore. I saw a tow which we passed to the left; am not a good judge of distances on the water.

I stood at wheel. I saw the tow when she opened by the point of the land. Our boat was then along there by Catharine ferry. When the tow opened she showed her starboard side. I can't tell how our wheel was then; we were heading a little off the Brooklyn shore. On discovering the tow the City of Hartford blew one whistle. I heard that whistle. The tug answered it with two whistles right away; we then answered with two, and starboarded our helm, hard astarboard. When we blew the one whistle we hove our wheel a little to port. We were steering to the right when we starboarded; putting our helm to star-

100 board broke our sheer. When we blew one whistle we hove our wheel hard aport, as far as it would go to port; it was to port when we starboarded. When we answered her two whistles we put our wheel to starboard at once. Putting wheel to port sheered her some; did not notice how much. We broke our sheer very soon after putting our wheel to starboard; after that we sheered slowly towards Brooklyn shore; then the tug gave us one whistle and we answered with three, and stopped and backed the boat. I heard that one whistle myself. I heard one signal of three whistles.

After we rang bell to back, our speed diminished so that we stopped by the land.

After the tug blew her one whistle she changed; she sheered in towards Brooklyn immediately after she blew her one whistle. I looked at her, and she was sheering towards Brooklyn. At collision she was heading in towards Brooklyn side, towards the land. Just after she blew the two whistles and before she blew the one the tow was heading about for us, a little across our port bow, towards New York.

After the tug blew her one whistle, there was nothing more could have been done by City of Hartford than was done to avoid collision. We hove our wheel to port at the one whistle we gave to go to the right.

HAMLIN STANNARD sworn:

I was on board City of Hartford at collision. I was watchman on forward deck. Coming down through river I was at my post. I was about midway of deck, pretty well forward. I did not observe position of City of Hartford in river when she was by Corlear's Hook.

I saw this tow. When I first saw it it was opening by the point; she was heading towards New York shore. I saw the starboard bow of the schooner towards the Brooklyn shore. I did notice particularly that City of Hartford did on my discovering the tow.

The City of Hartford blew one whistle first. I think the City
101 of Hartford was on a sheer when she blew her first whistle; she sheered to the right. She got an answer of two whistles in reply to our one whistle. Those two whistles came immediately after our one whistle—as soon as they could pass through the air. Our boat replied to these two whistles by answering with two whistles. I think that after that the City of Hartford rather sheered to the left. I recollect about it. I noticed that we were slowing down and did not run near as fast as usual.

Soon after the tow blew one whistle; the City of Hartford then blew three whistles. I heard those whistles. When the City of Hartford blew her three whistles we were nearly 300 feet—about our length—from the tow. At collision I noticed by the land to see if City of Hartford was going ahead by land or not. She was about at a stand still. I could not hear the bells from where I was, to tell.

Cross-examined by libellant:

I was on duty forward to look out for vessels in the dark. I reported nothing that morning after passing the Hook.

I am sure the City of Hartford was on a sheer to the right at the time when she blew her one whistle.

My attention was attracted by the one whistle of our boat. Then I looked and saw the tow, and saw we had sheered to the right. I am certain there was no sheer to the right before we blew the one whistle.

Cross-examined by Unit:

I did not notice which way the City of Hartford was sheering when I noticed she was running slow. I think she changed a point to the right by her sheer to the right. She changed from that sheer afterwards before the collision—half a point the other way from her extreme sheer to right—that is, back to within half a point from the course she was on when she started to sheer to the right.

When I heard the two whistles from the tug I think the boats were 600 yards apart.

When the tow hove in sight it was about abreast of the ferry-slip.

102 Henry B. Strickland recalled:

Between time I first saw the tow and the collision I was standing in the pilot-house, at the port side of the front rim of the wheel. I was engaged in steering the boat.

Before blowing first whistle she would sheer one way and the other, and I kept moving the wheel to stop the sheer. After blowing first

whistle there was no sheer either way until we heard the two whistles from the tug.

When I blew the first whistle we were about heading the tide; striking it full with our stem.

Cross-examined by libellant:

Captain Dibble was the head man and captain of the boat; no other captain.

OCTOBER 19TH, 1870.

ANDREW NELSON sworn.

I was steering the steamer City of Hartford; am a wheelsman on that steamer; was born in Sweden; been in employ of that line eighteen years. I was on the City of Hartford at this collision. I was in the pilot-house at the wheel on the starboard side. I was there coming down through the Gate, and all the way through the river. It was in the morning. I saw the tug and the two schooners. When I first saw the tow the City of Hartford was just about Catharine ferry, on the Brooklyn side. I saw the starboard bow on the outside and schooner, and then, as they hove by the point, I could see the tow-boat and the other schooner—all three of them. I saw that starboard bow by the point.

When I saw the tow just open by the point the City of Hartford was about five lengths of the City of Hartford from the tow, and about a length and a half of the City of Hartford from the Brooklyn piers. As soon as we saw the tow coming by the point we put our wheel three or four spokes to port in order to sheer over towards Peck slip. That
103 sheered the City of Hartford about one point to starboard—perhaps a little more, perhaps a little less.

Our boat blew the first whistle—one whistle. Our wheel was ported before that one whistle was blown. We wanted to get rid of the tow. Capt. Dibbell blew that whistle. I heard it myself; it was one whistle. The tug answered us with one whistle. One whistle was the first whistle I heard the tug blow. Then Captain Dibbell took hold of the wheel and we tried to get further to port—to go over toward Peck slip—hove it up to six or seven spokes in all to port. Then the tow-boat blew two whistles; then Captain Dibbell answered with two whistles; then we reversed our wheel, got it midships, and put it three or four spokes to starboard. Then the tow-boat blew one whistle, and then Captain Dibbell rang to stop the boat altogether. No more whistles from our boat. After we stopped then we backed; rang the bell twice to back.

When we rang to back we were, perhaps, one to two lengths of City of Hartford from the tow. When we rang to back the tow was heading right for us, so that we could not get out of her way.

When I first saw the starboard bow of the outside vessel she bore a very little on our starboard bow. When I heard the first one whistle from the tug she bore a little bit on our port bow. When the tug blew her two whistles she was still a little on our port bow.

I noticed how our vessels came together. She ran her bow against our stem.

At collision we were moving through water and by land. The tow had a strong fair tide with her.

WILLIAM H. GOODSPEED sworn.

I know the City of Hartford; known her ever since she was built; been on board of her very frequently on her passages.

I am agent for the boats at Goodspeed's Landing, in Connecticut, where she lands. I have observed the working of her engine when she approaches a landing place.

104 For Unit:

THOMAS H. KILEY sworn.

Am 32 years old; reside in New York City; follow water; done so 18 years; am a steamboat-pilot; been a pilot 6 years, more or less; been steamboating 10 years, principally around harbor of New York.

I know the steam tug Unit; was attached to her in March, 1869, as pilot; was on board of her at time of this collision. I was in pilot-house at the wheel till just before collision. I left the wheel on account of danger just before she struck. I took the wheel when we left the dock that morning. I knew the schooner Abby S. Oakes; we took her and the schooner Col. Jones; we were going to tow them through Hell Gate to Riker's Island. We took them in tow in the morning between 6 and 8 o'clock; tide was flood; took them alongside. They were at anchor some 200 yards from Brooklyn shore when we took them in tow. When we got straightened up to run up we were very near centre of river then; may be a little closer to Brooklyn shore. From that time to the collision I was not out of the pilot house.

At Fulton ferry, on Brooklyn side, we were, say, 150 yards off from Brooklyn shore; a little closer to Brooklyn shore than to New York shore. I saw the City of Hartford before collision. When I first saw her she was crossing from point of Corlear's Hook at Jackson street over towards Brooklyn shore. She did not pass out of my sight from that time; I kept her in sight from that time. She was closer to the Brooklyn shore than we were. As she came down I saw the whole of her. I gave her two whistles; a signal of two whistles. I don't know exactly whether before that I heard a whistle from her or not. I had heard one whistle; it might have been from her or it might have been from a ferry-boat. When I gave the two whistles I received an answer—it was two whistles in return from the City of Hartford; I knew they came from her—I could see the steam. After that, and before the col-

105 lision, I heard from the City of Hartford one whistle; am certain. The only signal I blew at any time was the one signal of two whistles. I did not answer the one whistle from the City of Hartford. When I gave the two whistles we were hardly past Fulton ferry slip on the Brooklyn side; we were not by it; at that time we were heading towards New York. When I gave the City of Hartford that signal she was about 500 yards off from me, or it might be more. At that time the City of Hartford was coming very nearly straight with the river. There is a bend at Fulton ferry. From that time on I kept watch of her.

When I gave the signal of the two whistles I ordered the schooners' wheels to be put to starboard, and I put mine to starboard also, gradually; starboarding kept us going along towards New York shore.

When the City of Hartford blew her two whistles in response to mine she made no change of course, and she made no change up to the time she blew one whistle; when she blew the one whistle I noticed her changing toward the New York shore.

When she blew the one whistle she was aiming for the starboard bow of the tug; at that time, by our starboarding, I was drawing off from the Brooklyn shore.

At the time I received that single whistle I was about 175 yards from the Brooklyn shore; had got off 25 yards more from the Brooklyn shore;

there was nothing but the City of Hartford between me and the Brooklyn shore; up to the time I received this single whistle I was going 6 or 7 miles an hour by the land.

I think that the City of Hartford was coming 8 miles an hour when she blew that one whistle; when I received that one whistle the vessels were 125 to 150 yards apart, more than the length of the boat.

When I received that one whistle I stopped and backed; rang 4 bells to slow, stop, and back, as quick as I could; I made up my mind
106 then there was going to be a collision.

From that time up to the time the vessels came together I was backing; the backing and tide turned our stern toward Brooklyn shore; that was done by the backing; kept my wheel to starboard; did not change it after I starboarded it; when she loses her way she stops minding her helm; she did stop minding her helm, and the boat backing, she tended toward Brooklyn; before we were hit we kept turning toward Brooklyn, the tide carrying us up; the City of Hartford struck port schooner on port bow; I observed wheels of City of Hartford; they were working ahead until five seconds before she struck.

At time of collision we had no headway by land; we were sagging with tide.

When City of Hartford struck, I think she was going four or five miles an hour; the lines that held the vessels were strong; the starboard schooner went clear by the blow; the City of Hartford cut into the port schooner 8 or 10 or 12 feet; she sank.

I am not in employ of owners of Unit now.

At time we struck our engine was working back, but our backward way was not enough to overcome the tide; the tide was slewing us around towards Brooklyn shore; we were not going as fast as tide was.

Cross-examined by libellant:

We swung two to three points towards the Brooklyn shore with the sag of the tide, we backing against it.

No one had hold of our wheel at the time but I.

Cross-examined by City of Hartford:

I did not hear the testimony given by the captains of the two schooners.

I have been troubled lately with a difficulty in hearing—for about two months or a little over.

The schooners lay in channel between Atlantic ferry and Wall-street ferry that morning when we took hold of them, about 200 yards from Brooklyn shore; we took hold of the Abby S. Oakes first; I
107 can't tell whether the Abby S. Oakes laid ahead or astern of the other schooner; when ready to start we were about 200 yards from Brooklyn docks; I can't tell whether we then turned towards Brooklyn or New York; we started with the schooners one-half to three-quarters of a mile below the point of collision; after we had gone a quarter of a mile we were within 150 yards of Brooklyn shore, a little more or a little less; in going that quarter of a mile, after straightening up, we we' heading towards New York all the time.

When I first discovered the City of Hartford we were 50 to 100 yards below Fulton ferry; she was then crossing from point of Hook, towards Brooklyn; from Fulton ferry to point of Hook, where I saw the City of Hartford, is nearly a mile.

I knew what boat it was that was coming; I knew where she generally landed; when I first saw the City of Hartford she was heading

about S. W., and she bore from me about E. N. E.; I looked straight ahead to see her then, over neither bow; I should judge she was then heading about S. W. by W.; she was heading across to my starboard side, towards Brooklyn side of me; when I first saw her we might have been three-quarters of a mile apart.

When I first saw the City of Hartford she was nearer to the New York shore than to the Brooklyn shore; she was leaving the New York shore. From that time to time of collision I did not lose sight of the City of Hartford.

When I blew the two whistles the City of Hartford was between Bridge-street ferry and Catharine ferry; I was then a little W. of or abreast of Fulton ferry, and 150 yards from Brooklyn shore; the City of Hartford was then less than 50 yards from the Brooklyn shore; at that time the City of Hartford was on our starboard bow; enough on our starboard bow so that if she had kept her course she would have cleared me one hundred feet on my starboard side; at that time the City of Hartford was heading along the Brooklyn shore.

108 The City of Hartford blew her two whistles immediately after I blew mine; after the City of Hartford blew her two whistles, I did not shift my helm at all.

When the City of Hartford blew those two whistles, she and we were, I should say, 800 to 1,000 yards apart; the City of Hartford blew two whistles, and kept her course; then she blew one whistle and altered her course.

The two steamers were 400 yards apart when the City of Hartford blew her one whistle; before she changed her course, at blowing her one whistle, she was coming along on our starboard bow; the City of Hartford was nearer the piers than we were when she blew the one whistle; she was then 100 feet, or 50 feet, or more or less, from the Brooklyn piers; when the City of Hartford blew the one whistle we were 200 yards from the Brooklyn shore, going from the Brooklyn shore all the time; when the City of Hartford blow the one whistle, we were heading towards New York, towards Pier 47, or 48, or 49, going six or seven miles with the tide; when the City of Hartford blew the one whistle she changed her course to the New York shore.

JOHN R. GRACE sworn.

Am 55 years old; reside in Brooklyn; am a pilot; am steering a ferry-boat now; followed water 35 or 38 years; been pilot in neighborhood of 25 years. In March, 1869, I was attached to the ferry-boat George Washington, running from Bridge street and New Chambers street; I was on board of her that morning; I saw this collision; I was standing alongside of the pilot-house on my boat; the Geo. Washington was in the slip on the New York side; I was standing by the outer pilot-house; I saw both of the boats before they came together; when I first observed the City of Hartford she was above Catharine Ferry, on Brooklyn side; I noticed the tug first; when I first noticed her she was right abreast of Marston & Powers' dock, above Fulton-ferry slip; that dock forms the point; the tug kept out so as to avoid the eddy

109 which would throw her against the Brooklyn shore; when I first saw both the City of Hartford and the tug, they were 50 or 60 yards apart; I had seen each before.

The City of Hartford was closer to the Brooklyn shore than the tug was when I first observed both; I heard whistles; I can't swear I heard either boat whistle; this collision took place right abreast lower side of

Catharine ferry, in a line between me and lower side of Catharine ferry; river there is about 650 to 700 yards wide; the City of Hartford was going slow—five or six miles an hour; I noticed her wheels at one time; I noticed them last when the boats were fifty or sixty yards apart. The City of Hartford struck the schooner on the starboard side of the tug; I know she did; I did not notice whether the tug changed her heading before the collision; both boats were going ahead; they were fifty or sixty yards apart when I thought there would be a collision; I thought the speed of the City of Hartford continued about the same. It was a clear morning.

Cross-examined by libellant:

I was 500 or 600 yards off diagonally from place of collision.

A vessel with a heavy tow must keep out of the eddy or be thrown with her head to the shore. The City of Hartford had not got down to the eddy.

The eddy begins at Marston & Powers' dock, and extends up 400 or 500 feet. At three or four hours flood a tug with two schooners ought not to go, in going up, within 100 yards of the land above Fulton ferry, where the eddy is.

(This testimony objected to by the City of Hartford.)

Cross-examined by City of Hartford:

The eddy begins at nothing at Marston & Powers' dock. At Catharine ferry on Brooklyn side the eddy extends out, say, thirty yards.
110 It is not safe for a tow with two vessels to come within 100 yards of the outer line of the eddy.

THOMAS ROCKEFELLER sworn:

Am 54; live in Williamsburgh, L. I. Am an engineer on steamboats; been an engineer thirty-five years. Know steam-tug Unit; was attached to her in March, 1869, as engineer; was on board of her at collision; had charge of her engine; took charge of it when she left her dock, and continued in charge up to collision. Unit is about sixty-eight or seventy feet long, maybe seventy-five. She is a propeller, high-pressure. I did not see the smash coming in; saw them just before they struck. My engine-room is midship, on deck, doors each side; they were open that morning.

I heard two distinct, sharp whistles; we gave one signal; at the time I was in the engine room, sitting down; it is about seven feet wide between the doors. I heard no answering whistles. From that time until the collision there was no whistle from our boat. I heard some whistles, but I can't say whether they were from the City of Hartford.

I received four bells before the collision to slow and stop, and two to go back. I have been on side-wheel steamers twenty-odd years. If you unhook, an engine will sometimes make three or four turns before it stops, especially against the tide. A boat will go faster ahead than back. I obeyed the four bells promptly. I did not feel or see the collision. We made about 180 turns back before the collision; we make about 100 turns a minute back. At time of collision we had been backing one and a half minutes, strong; the engine was running back very fast. I could see whether the City of Hartford was coming ahead. When the City of Hartford was thirty feet from the schooner's jib-boom her wheels were going ahead and she was just unhooking. I noticed by dock that we were not going ahead by the land; the fireman called my attention to it.

111 Cross-examined by City of Hartford:

When I heard the first of the bells I shut off the throttle; that shuts off the steam entirely from the engine. When I got the second bell, I shifted the lever to stop; when I got two more bells, reversed the lever and backed. When I backed the engine I threw the exhaust out, that made her make from fifteen to twenty more turns a minute, and increased the size of the exhaust instead of exhausting into the stack through a 2½ to 3 inches opening that made the exhaust through a 5-inch opening. As I threw out the exhaust under the pressure of eighty pounds, which I had then, it threw up a puff of steam twenty feet high, made a noise which a person might mistake for a whistle; can't hear it as far as you can hear a whistle.

PETER A. WOLJAMUTH sworn:

Am a pilot—steamboat-pilot; been so ten years; during that time have been on the sound steamers exclusively; have been on the sound steamers sixteen years altogether; am attached to the steamer Continental now. I know the City of Hartford; have never been in her. She is a trifle smaller than the Continental. I am familiar with the working of steamboats.

Q. If the City of Hartford is running against a flood tide and making from seven to eight knots an hour, give her a sheer to starboard of from two to three points, how far would she run on a change of wheel to starboard before that sheer would be overcome and a change made the other way be perceptible?

(Objected to on ground that witness has not shown he is familiar with the working of City of Hartford, and the question ought to state that the wheel was rolled hard to starboard with four men rolling it; and as irrelevant, and that the subject-matter sought to be disclosed by it is incompetent; and also because the two to three points assumes a case not disclosed by the evidence. Objection overruled.)

112 A. Assuming that the she was swinging to starboard, that is rather a hard question to answer. Some steamers will break the steer very quick and other steamers would not. I can't tell anything about the City of Hartford, not having handled her. I must handle a vessel to answer such a question.

Can you speak of that with reference to boats of her class?

(Objected to by City of Hartford on ground that the witness must speak of boats he has seen work, and that he has already said he must handle a boat in order to judge. Objection sustained.)

Can go ahead with a side-wheel steamer faster than you can back her.

WILLIAM J. DALTON sworn:

Am 37; am a steamboat-pilot; followed that business for sixteen years around harbor of New York; am now attached to steam-tug Charm. March 27, 1869, I was attached to steam-tug Jonathan Chase; was on her on that morning. I was lying at end of Pier 36, East River, New York side. I was on my upper deck, outside of wheel-house; head down stream; I was on port side of wheel-house. I saw this collision.

The boats were thirty or forty feet apart when I saw there would be a collision; that was the first time I noticed them. Collision took place off Empire stores, in Brooklyn, just below Catharine ferry, I should judge. Empire stores is first pier below Catharine ferry, on Brooklyn side. Collision was, as near as I could judge, about centre of river,

perhaps a little nearer Brooklyn shore. I could not tell which way their heads were angling at collision. I heard no crash. I saw City of Hartford strike schooner on port bow; schooner on port side of tug. I observed wheels of City of Hartford; they were stopped when I first saw them, not revolving either way; they were stopped when she struck the schooner; as soon as she struck her wheels commenced to go back. I saw the schooner sink.

113 On flood tide there is an eddy tide in by Marston & Powers' stores; when the tide is running up it is slack water in there; sets down very little.

In going through the Gate we generally avoid that eddy, and keep out in true tide.

Cross-examined by City of Hartford:

If you strike the eddy it generally cants you in shore. You can go faster in true tide.

The collision took place about on a line between me and Empire stores.

The eddy does not extend over fifty feet from Brooklyn shore—the widest part of it. The eddy commences just east of Fulton ferry, and ends at Catharine ferry. At Empire stores the eddy does not extend over fifty feet into river from ends of dock.

Cross-examined by libellant:

No danger in the eddy.

Thomas H. Riley recalled:

I don't know as I said anything yesterday as to the vessels being 1,000 yards apart. Don't remember that I did.

When the City of Hartford blew her two whistles in answer to me the boats were 400 to 500 yards apart. Might have been a little more, or a little less. When the City of Hartford blew her single whistle the boats were 125 yards apart. I don't remember saying yesterday that they were 400 yards apart at that time. If I did, I meant it was when the City of Hartford blew the two whistles.

Cross-examined by City of Hartford:

The gentleman sitting by M'r Beebe is Samuel Thomas. He told me, yesterday p. m., I had got the distances wrong, or somebody did.

Cross-examined by libellant:

There were on board tug that morning, myself, Rockefellar, Bell, and a deck hand.

114 M'r Choate for libellant.
M'r Huntley for City of Hartford.
M'r Donohue for the Unit.
M'r Carter for libellant.

District court of the United States for the southern district of New York.

THE STEAM-TUG UNIT, HER ENGINE, TACKLE, impleaded, &c., *ads.* HUDSON S. RIDEOUT AND OTHERS.

THE STEAM-TUG UNIT, HER ENGINE, TACKLE, &C., *ads.* CHARLES ROBINSON.

Please to take notice that Captain Redman and Jacob A. Bell, witnesses, who are about to proceed to sea, a distance greater than 100

miles, will be examined (de bene esse) on the part of the steam-tug Unit and her tackle, in the above-entitled cause, before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States courts, 41 Chambers street, in the city of New York, on the 8th day of May instant, at 10 o'clock in the forenoon of that day, at which
115 time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Yours, &c.,

JOHN A. OSBORN.

To R. H. HUNTLEY, Esq.,
Proctor for City of Hartford.
EVARTS, SOUTHMAYD & CHOATE, Esqrs.,
Libellants Rideout.
SCUDDER & CARTER, Esqrs.,
Proctors for Robinson.

UNITED STATES OF AMERICA,
Southern District of New York, City, County, and State of New York, ss:

Be it remembered that on this eighth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress enttled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Redmond, to testify and the truth to say, on the part and behalf of the steam-tug Unit, in a certain suit or matter of controversy now depending and undetermined, in the district court of the United States for the southern district of New York, at New York, wherein Hudson S.
116 Rideout et al. vs. Steamboat City of Hartford, and Steam-tug Unit her tackle, &c., and Charles Robinson vs. The Same.

And the said JOHN REDMOND, being about the age of fifty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Redmond, and he did thereupon depose, testify, and say as follows, viz:

I am master mariner; I expect to leave New York on Monday or Tuesday next; I am attached to the bark William Turner, as master; on the 27th day of March last I was on the screw dock, East River; the bark was on the screw dock, also; this screw dock is at pier 39; I saw a collision that morning between the steamboat City of Hartford and a schooner. It was very clear at the time the collision took place, between 6 and 7 o'clock in the morning; the tide was running to the eastward; very little wind; I was standing on my quarter-deck near a small grat-

ing at the time of collision; the stern of my vessel was towards the stream. The collision took place in the stream about one-eighth from Brooklyn side, two-thirds from New York side. I first observed the City of Hartford when she was about two lengths from the schooner. I observed the City of Hartford first. There were two schooners, and a steamboat between, lashed to her sides. The City of Hartford, when I first observed her, bore to the left, and eastward of me; the schooner to the west—to the right of me. The broadside of the steamer and of the schooner was presented to me.

When I first saw the City of Hartford she was going perhaps a good three knots; she slowed afterwards. Her wheels were moving ahead when I first observed her.

Q. Was there any time before she came in contact with the schooner that her wheels stopped?

A. No; not until she was close on top the schooner. I had lost the sight of the schooner's stern when her wheels stopped.

117 In referrence to where I was standing the collision occurred the halt of the steamer to the west of a line drawn across the river, I should think. I saw her strike the schooner, and heard the crash. The steamer struck the schooner next to New York, and on the port side of the steam-tug; struck the schooner on port side. The steamboat had crossed the schoone.'s bowsprit at the time she struck her.

At the time the collision the schooner had very little headway; the tide would take her some.

I could not say that whether the bows of the schooners were swung any at the time the vessels came together. The schooners could not have been going over two knots at the outside; the tide was taking them all they were going. I could not see how her propeller was working.

Q. When you first observed the City of Hartford did you form any opinion as to whether there would be any collision?

(Objected to.)

A. Not when I first saw them; I did not think there would be a collision.

Q. How close were they together when you thought there would be a collision?

(Objected to.)

A. About one length of the large steamer—good one length.

Q. How many spokes of the Hartford's wheel would have prevented that collision at the time you first saw her, in your judgment?

(Objected to.)

A. As to the spokes I could not say, (but had she stopped half the length of herself I don't think the collision would have taken place.)

(The counsel for the Hartford objects to last part of the answer in parenthesis as not responsive.)

118 There were no vessels between the New York shore and these vessels, not one.

Q. Did you hear any whistles?

A. I could not say; I heard whistles, but don't know whether they came from these boats.

I have followed the water for thirty-two years.

Q. Did you at that time form a judgment as to upon which vessel rested the blame for that collision; and, if so, which?

(Objected to.)

A. I formed a judgment, and thought the blame rested on the City of Hartford; I had seen the City of Hartford before in that way, and

often, and had never seen the other vessels to know them; that is all that I know of either of them.

Cross-examined by M'r Huntley, for the Hartford:

I live on board the ship, pier 8; I have no residence on land; I was born in Scotland; I belong to Great Britain.

I formed the opinion that the Hartford was to blame when she was about one length of herself from the schooner.

I had heard whistles at this time, but could not say who from; I could not say how many.

I did not see any steamers in that neighborhood at that time or anywhere about there; at this time the Hartford was heading right down the river; she was going two knots when she was one length of herself off.

Her bows were a little to the eastward of a line across the river from me at this time; Hartford was one-third from the Brooklyn side, and two-thirds from the New York side; can't tell how wide the river is there.

Q. At the same time, that is, when the Hartford was one length of herself from the schooner, where, with reference to the river, was the schooner?

119 A. As far as I could tell the one was going right into the other; the tug with the schooner was one-third from the Brooklyn side; the tug and schooner appeared to me to be heading right up the river; they were not going faster than the tide was taking them—1½ to 2 knots; in my judgment, I should think they were not going quite as fast as the tide.

Q. Why do you say you thought the Hartford to blame while she was yet her full length from the schooner?

(Objected to by Mr. Choate on the ground that the witness has not said so.)

A. Because she never ported her helm to come to the New York side; if she had ported her helm she would have cleared her.

Q. How do you know that the City of Hartford did not port her helm?

A. Because her angle would have been visible to me long time before that.

Q. Explain your last answer.

A. Had she ported her helm I could have observed her bow coming over this way toward New York.

Q. Did it occur to you that the tug and schooners should change their course?

A. I could not say.

Q. Did you observe at any time a change in the speed of the Hartford?

A. Yes, sir; when she was about half length of herself from the schooners, she slowed more.

Q. Did you see the Hartford's wheels at the moment they stopped?

A. Yes, sir.

The collision had not then taken place. I could see a little before her fore-rigging of the schooner at this time. I could not observe that the schooner swung any. I am of the opinion that the Hartford is about 300 feet long. I did not see the sun; don't know whether it was up or not; it was cloudy.

I first told the captain of the tug, Jonathan Chase, who towed me down to pier 8 from the screw-dock.

I never had anything to do with the navigation of steamboats.

120 Cross-examined by M'r Choate:

I was standing looking across the river. Nothing particular attracted my attention. I kept my eyes on the Hartford all the time till they got clear of one another; in fact, till the schooner sunk.

Q. Did you take your eye off from the Hartford enough to have seen it if the schooner had swung around at all?

(Objected to.)

A. No; I did not take my eyes off the Hartford at all. I had not been doing anything before I saw either vessel. I had seen the Hartford pass that point often before.

Q. When you first saw the Hartford that morning of collision was she going slower than usual?

(Objected to.)

A. Yes; slower than the usual.

Q. When you first set eyes on her had she already passed the bend in the river?

A. I think so; quite certain of it.

Q. You have spoken several times of eastward and westward of the line across the river from you; please look at the map and say where the line would strike on the Brooklyn side.

A. Square across the river.

Q. Do you mean to say, then, when you first saw the steamer she had already passed below the bend in the river?

A. I cannot answer it. I don't know much about the bends in the river. I am not aware of a sharp turn at Fulton ferry, on the Brooklyn side.

Recross by M'r Huntley:

Q. Will you say that you did not hear whistles from the "City of Hartford?"

A. I did not know who the whistles were from. I heard dif-
121 ferent whistles, because different whistles are different, but can't say whether these came from different boats.

JOHN REDMOND.

Subscribed and sworn to before me this 8th day of May, 1869.

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea to go more than one hundred miles from the place of trial of the above cause.

I further certify that due notification of the time and place of taking the said deposition signed by me was made out and served on the ad-

verse party, his agent or attornies, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

I further certify that on the 8th day of May, in the year of our
122 Lord one thousand eight hundred and sixty-nine, I was attended by proctors for respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statement, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand in the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 17th day of May, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 24th day of May, in the year of our Lord one thousand eight hundred and sixty-nine, I, Edward L. Owen, a commissioner, duly appointed by the circuit court for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress en-
123 titled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at number 72 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Jacob Bell, to testify and the truth to say on the part and behalf of the steam-tug Unit, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York, wherein Hudson S. Rideout and als. are libellants against the steam-tug Unit and the steamer City of Hartford, and wherein Charles Robinson is libellant against the steam-tug Unit and the steamer City of Hartford.

And thereupon the said JACOB BELL, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Jacob Bell, and he did thereupon depose, testify, and say as follows, viz:

I am 30 years of age. I am a seafaring man, and expect to leave the first of next month, bound for China. I have followed the water about fifteen years.

The collision occurred about the 7th or 8th of April last past. I was attached to the Unit at that time as fireman. I joined her about one month previous.

The collision took place in the East River, in the vicinity of Catharine or Bridge street ferries.

The Unit had two schooners attached to her at that time; we took hold of them about the Buttermilk Channel, and were taking them through the gates. The collision took place between 6 and 7 in the morning, or thereabouts.

Previous to the collision I had been down in the fire-room, coming up on deck occasionally. The fire room is forward the engine-room, down in the hole.

124 I saw the City of Hartford before the collision. I should judge she was not over fifteen or twenty feet from the end of the schooner's jibboom when I first saw her; at that time I had come out of the fire-room.

She came in contact with the first schooner. The schooner's stems projected beyond the bow of the tug by several feet.

Before I came on deck I heard four bells from the pilot—one to slow, one to stop, and two to back; there was only a few seconds between the bell to slow and the bell to stop; there was a little more intermission between the bell to stop and the bells to back than between the other two; those orders were obeyed.

At the time I went on deck I should suppose the tug had been backing two minutes, more or less. The backing of the boat over the usual time induced me to go on deck.

When I got on deck our tug was backing at that time; she had no headway; the tide was running flood; she appeared to have stern-way on, as she seemed to be standing still, and the water was running by her rapidly.

When I first saw the City of Hartford she was coming stem towards us, pointing for the schooner's starboard more than anything, and appeared to be coming between the schooner and the tug.

Our heads were going off towards the Brooklyn shore; I did not notice any change in the course of the steamboat until she struck the schooner; she struck the schooner on the port bow, just forward the forerigging; her stern struck; it was a clear morning. At the time of the collision the sterns of the schooners and the tug were off towards the Brooklyn shore. The first thing I noticed when I came on deck was the wheels of the City of Hartford; they were turning over ahead. She was not going anyways quick. She had slowed down. The Hartford's wheel did not stop until she lapped inside, and her stern had

125 passed the end of the jib-boom, and had either struck or was about to strike the schooner. I don't recollect hearing any whistles from either the tug or the steamboat. The collision took place on the Brooklyn side of the centre of the river.

The blow carried away some of our bow-lines and knocked the schooner back pretty strong, and she sank in about seven or eight minutes.

Cross examination by M'r Choate for libellants Rideout and Robinson:

The backing and the tide took the tug and the schooner around towards the Brooklyn shore.

The pilot, I suppose, was at the wheel of the Unit. Thomas Riley was his name.

All the orders I heard after I came out of the fire-room, were given

just before the collision, "to cast off the lines." I heard no orders, and heard no whistles. I know nothing about the wheel of the Unit or the wheel of the schooner.

Cross-examined by Mr. Huntley for the City of Hartford:

The first object I saw when I came on deck was the City of Hartford coming towards us. I saw her bow and her sides as far as her wheels—the paddle-wheels.

It was not quite a minute from the time I first saw the City of Hartford until the blow. I am sure the Hartford's wheels were going ahead, and kept doing so until just the moment of the collision. The top of our rail was not over a foot and a half to two feet from the water. The rail of the first schooner was between four and five feet from the water's edge. The first schooner had a flying jib-boom. I believe her sails were all furled.

At the time I first saw the Hartford the schooner's flying jib-boom was ranging on the New York side of her stem; the stem appeared to be pointed between the schooner's flying jib-boom and the tug. If we had not slowed the Hartford would have struck between the port
126 schooner and the tug; that is, if they had kept going as they were when I first saw them.

The two schooners were lashed close along side.

I could not look over to the water on the outside of the schooner to see the water; the water I saw was between the schooner and the tug; I did not notice how fast we were going past the land.

JACOB BELL.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is a seafaring man and about to go to sea, and more than 100 miles from the place of trial.

I further certify that a notification of the time and place of taking the said deposition signed by me was made out and served on the proctors for the libellants Rideout & Robinson, and proctors for The Steamboat City of Hartford, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, and that on
127 the 24th day of May, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by counsel for respective parties and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and he subscribed the same in my presence. I have retained the said deposition in my possession for the

purpose of transmitting the same with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 24th day of May, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

EDWARD L. OWEN,
United States Commissioner.

128 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York on Friday, the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy.

Present, the honorable Samuel Blatchford, district judge.

HUDSON S. RIDEOUT AND OTHERS
vs.
THE STEAMBOAT CITY OF HARTFORD AND the Steam-tug Unit, &c.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against The Steamboat City of Hartford, her tackle, &c., the damages by them sustained by reason of the injury to the vessel or schooner Abbie S. Oakes, caused by the collision in the amended libel set forth, and also for the pending freight due said libellants on the cargo on board said schooner at the time of said collision, and also for the loss of certain supplies, clothing, charts, and other property on board of said schooner at time of said collision, together with their costs to be taxed; and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and to report thereon to this court with all convenient speed.

And it is further ordered, adjudged, and decreed that the libel
129 as against the Steam-tug Unit, her tackle, &c., be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

SAMUEL BLATCHFORD.

Filed December 16, 1870.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Friday, the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy.

Present, the honorable Samuel Blatchford, district judge.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., and the Steam-tug Unit, her tackle, &c. } 22492.

The case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective

parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellant recover in this action against The Steamboat City of Hartford, her tackle, &c., the damages by him sustained by reason of the loss and injury to the cargo of corn on board of the schooner Abbie S. Oakes at the time of the collision in the amended libel set forth, with his costs to be taxed. And that it be referred to a commissioner to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

130 And it is further ordered, adjudged, and decreed that the libel as against the Steam-tug Unit, her tackle, &c., be, and the same is hereby, dismissed with costs, to be taxed against the libellant.

(Signed) SAMUEL BLATCHFORD.

Filed December 16, 1870.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Friday, the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy.

Present, the honorable Samuel Blatchford, district judge.

HUDSON S. RIDEOUT AND OTHERS
vs.
THE STEAMBOAT CITY OF HARTFORD AND the Steam-tug Unit, &c. } 22488.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against The Steamboat City of Hartford, her tackle, &c., the damages by them sustained by reason of the injury to the vessel or schooner Abbie S. Oakes, caused by the collision in the amended libel set forth; and also for the pending freight due said libellants on the cargo on board said schooner at the time of said collision; and also for the loss of certain supplies, clothing, charts, and other property on

131 board of said schooner at time of said collision, together with their costs to be taxed, and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and to report thereon to this court with all convenient speed.

And it is further ordered, adjudged, and decreed that the libel as against the Steam-tug Unit, her tackle, &c., be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

(Signed) SAM'L BLATCHFORD.

A true copy.

GEO. F. BETTS, *Clerk.*

Filed December 16, 1870.

United States district court, southern district of New York.

HUDSON S. RIDEOUT AND OTHERS
vs.
THE STEAMBOAT CITY OF HARTFORD AND the Steam-tug Unit, &c.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD AND THE Steam-tug Unit, &c.

FEBRUARY 7, 1871.

Pursuant to order of reference and notice, proctors for respective parties in the above causes present, and proctors for libellants
132 Rideout and others, calls as a witness Hudson S. Rideout, who, being duly sworn, says I was master of schooner Abbie S. Oakes at the time of the collision with the City of Hartford. I am one of the libellants.

The owners of the Abbie S. Oakes at the time of collision were Joab W. Palmer, Benjamin Johnson, Babb, and Strickland, of the firm of Babb & Strickland; William H. Strickland & Co., consisting of William A. Strickland and Philo A. Strickland; George Bowen and Johnson, of the firm of Bowen & Johnson, (not Benjamin Johnson;) Joseph Oakes, Charles Doane, Walton, James Neally, and myself.

The mate was William Atwood. At the time of the collision we were on a voyage from Baltimore to Portsmouth. We were between Fulton and Catharine ferries at the time of the collision. The City of Hartford struck the vessel between the night-heads and fore-rigging, cutting her below her light water-mark, her deck in to the foremast, losing windlass, bowsprit, jib-boom, chains, and one anchor, and she immediately sunk in about eight fathoms water. She was afterwards raised by Baxter & Sons, a wrecking company, by the use of tugs and pumps; she was raised the day after the collision. I immediately upon the collision proceeded to take steps to raise and preserve her. She was towed to Atlantic Dock after being raised by the tug John Fuller and another tug, the same tugs which raised her. She was put into dock, and there her cargo discharged, or so much of it as was in her after the collision; part of her cargo, which was corn in bulk, was washed out of her before she was in dock. We were fourteen days in the Atlantic basin; we were not put on any dock. After her cargo was discharged she was sold at auction; auction at Atlantic dock.

Q. What did she bring at auction?

(Objected to on the ground that no notice was given or any measures taken to have a fair sale, and further immaterial; overruled; exception.)

133 A. $1,175.00. I and the whole crew remained by the vessel until she was sold, from the time of collision. The crew consisted of three besides myself. I and the crew assisted in raising her, and after she was raised we remained by her to protect her and the cargo. I paid $800 for raising the vessel and cargo; I paid it to J. C. Baxter & Son. I paid $150 for towing and pumping from Hunter's Point to Atlantic Dock, till the cargo was discharged; paid it to J. C. Baxter & Son. I paid $200 for two tugs—Uncle Abe and Dan Brown—towing from the East River to Hunter's Point; paid $11.10 wharfage at Atlan-

tic Dock for fifteen days; paid my crew's wages from the time of collision down to the time of sale; it amounted to $30 besides board; paid $7 a day for board for myself and the three men; boarded ashore. These expenditures were necessary to raise and preserve the vessel and cargo. I boarded at the United States Hotel. Part of the expenses were incurred before she was discharged; 27th of March, 1869, she was sunk, and on the 29th she was discharged.

The $200 paid for the two tugs, Uncle Abe and Dan Brown, was for towing before the discharge of cargo. The $150 was paid for towing before the discharge of cargo. The $800 was paid for raising before she was discharged. I went to Atlantic Dock on Monday, the 29th March, and was discharged that day. I paid $5 for wharfage and watching at Hunter's Point. I remained attached to the vessel after the sale; she went to Bangor, Maine. The hole in the vessel was patched up so she could sail. About the 10th or 15th day of April she left for Bangor, Maine, and arrived there in April; left here and stopped at New Haven and fixed up a little, and arrived at Bangor between the 25th of April and 1st of May. She was repaired at Brewer, Maine, by Joseph Oakes.

Q. State whether, in your opinion, after these repairs were put upon her she was in as good condition as at the time of the collision.

134 (Objected to on the ground that he is not shown to be competent; overruled; exception.)

A. I do not think she was. I have been at sea since I was fifteen years old; for fifteen years; been master for seven years. I examined the condition of the vessel while she was being repaired.

Q. State the amount of the depreciation, in your opinion, of the value of the vessel from the time of the collision up to the time of the completion of the repairs?

(Objected to; sustained.)

I have owned in other vessels prior to this; owned in two.

Q. How old was the vessel at the time of the collision?

A. The papers said that she was launched on the 17th of October, 1868, and she was sunk 27th of March, 1869. I was made master on the 17th of October, 1868. I was acquainted with her condition at the time of the collision and at the time of the completion of her repairs at Brewer. I bought in her the 17th of October, 1868, and sold an interest in a sloop 45 tons at that time; sold another interest in a sloop five or six years before the collision. I was acquainted with the market value of vessels of about the description of the Abbie S. Oakes in 1869.

Q. State the amount of the depreciation, in your opinion, in the value of the vessel from the time of the collision up to the time of the completion of the repairs, in consequence of the injuries received by the collision.

(Objected to; sustained; exception.)

Q. How much less was the Abbie S. Oakes worth after the repairs were made upon her than at the time of the collision, in consequence of the injuries received by the collision?

(Objected to; sustained.)

135 I was there while the repairs were being put on the Abbie Oakes. She was timbered out on her fore-rigging to her night-heads; on one side one length of deck-plank taken up, new beams put in from her foremast forward; new forefoot put on; new windows, new bowsprit, jib-boom, and head-gear, chains, and one anchor. She was caulked, painted, and finished up. She received injuries which were not repaired, her rail and her starboard side broken, and timber-heads on starboard

side broken, sails and rigging badly chafed. One side of her was started 1½ inches—port side.

By commissioner:

She was not as good after these repairs as before the collision, on account of strains, chafe, and damage of sail and rigging, broken rails, timber-heads, and loss of chain not replaced. All these could have been made good at a greater expense; and if these had been done, or repaired at this greater expense, she would, in my opinion, been as good as before the collision.

Adjourned to Thursday, February 9th, 1871, at 10 a. m.

FEBRUARY 9, 1871.

Parties present.

Hudson S. Rideout continues:

Q. After the repairs had been put on this vessel, how much less was she worth than just before the collision by reason of the injuries suffered by the collision?

(Objected to; sustained; exception taken.)

Q. Was the Abbie S. Oakes permanently depreciated in value by the injuries received in consequence of the collision?

(Objected to; sustained; exception.)

136 Q. What, in your opinion, was the value of the Abbie S. Oakes at the moment before the collision?

(Objected to; overruled; question allowed for the purpose of merely ascertaining the fact of value of vessel before collision as an element contributory to general average, if such general average is hereafter offered in evidence.)

A. Fifty-six hundred dollars.

Question by proctor for cargo claimants:

Q. What cargo had you on board?

A. Corn in bulk, laden in Baltimore, bound for Portsmouth, New Hampshire. I can't tell from memory what day of the month I left Baltimore; my bills of lading will show. (Paper shown witness.) This is a bill of lading of the cargo of the vessel; it is signed by myself as master; it was signed on the day it bears date. Marked Exhibit No. 1, Feb. 9, 1871, for identification. The cargo was laden in the hold of my vessel, and it filled the hold; all the cargo continued on board until the collision. I have carried other cargoes of corn in bulk in the Abbie S. Oakes before, at a time when the hold was full.

Q. State whether you have ever weighed a cargo of corn in bulk from the hold of the Abbie S. Oakes when the hold was filled.

(Objected to.)

A. Yes; that is, we weighed one bushel in a hundred, and averaged. I have measured it.

Q. When was it?

(Objected to.)

A. This last fall.

Q. What kind of corn was that you so weighed?

A. High mixed New York State corn—a little white and a good deal of yellow.

Q. State how full the hold of your vessel was at the time you measured out the cargo last fall above alluded to.

137 (Objected to.)

A. Full.

Q. How full was it at the time of the collision with the City of Hartford, and what kind of corn?

(Objected to.)

A. The hold was full, and it was Maryland yellow corn.

Q. How much corn was there in the hold of your vessel at the time you weighed out your cargo last fall, as mentioned before?

(Objected to; overruled; exception.)

A. The weighmaster told me it held out. I don't know the exact dimensions of the hold of Abbie S. Oakes; her tonnage before the collision was $74\frac{23}{100}$, new measurement—custom-house measurement; her hold has not been changed in size since the collision, nor her tonnage increased or diminished. When I took this corn in question on board at Baltimore it was in good order and condition.

Q. What, if any, change occurred in its condition from the time of loading to the moment of collision with the City of Hartford?

A. I never saw a kernel of it after the hatches were battened down in Baltimore; I don't know whether the hatches were water-tight or not; the hatches were caulked, taurpaulins on, and battened down. A portion of the corn ran out after the collision, while the vessel was submerged; the corn left was put into a store after the vessel was raised; in M'r Shaw's store-house and dry-room, Atlantic Dock, Brooklyn. I know nothing more about the corn after it was put in the store-room.

Q. Was any portion of the expenses testified to by you as having been incurred in the port of New York after the collision paid you by any person?

(Objected to.)

138 A. Yes, sir.

Q. Who was it?

(Objected to.)

A. Agent of the underwriters—a M'r Baker, of the firm of Baker & Crowell, South street.

Q. How much did M'r Baker pay you?

(Objected to; overruled; exception.)

A. $600, besides a pro rata freight on what I deliver, to wit, $150.

(Bill of lading offered in evidence; objected to; overruled; received in evidence, and marked "A," J. A. O. It is offered by libellants' counsel to prove the amount of freight, and whatever else it may be pertinent to.)

When I took this cargo of corn on board I signed three bills of lading.

Q. What did you do with them?

(Objected to; overruled; exception.)

A. One I signed in book at Baltimore, one I put in my pocket, and the other, I suppose, they (shippers) sent to the consignee. I don't think I signed but three.

(Exhibit A shown witness.) Which was this one?

(Objected to.)

A. This is not the one I put in my pocket. This one I left in Baltimore with the shippers of the corn.

Examined by M'r Tweed, for libellants, as to vessel:

Q. Was there any work done on the Abbie S. Oakes before she was raised?

A. There was. There were temporary repairs; her bow was
139 patched so she could be pumped out. Baxter & Sons patched up her bow for the purpose of putting her in the condition so she could be raised. I paid Baxter & Sons for that work.

Q. How much?

(Objected to; overruled; the bills, or parties who did the work, to hereafter prove the work done.)

A. $800. This is the same item testified to yesterday, and includes the pumping and raising. No other work was done except what was necessary at that time to raise her. Paid board for myself and crew from time of collision to day of sale.

Q. How much did you pay to your crew for wages from the time of the sale until the arrival of the Abbie S. Oakes at Brewer, Maine?

(Objected to.)

A. I can't recollect without looking at a memorandum made at the time. I have a memorandum by which I can refresh my memory—a bill made out to the owners. I put the account in the book at the time the expense occurred. I made a copy from the book myself; that copy is a correct copy.

Q. After looking at that copy which you now have is your recollection in regard to the subject so refreshed as to enable you to testify concerning the amount so paid by you?

(Objected to.)

A. It is so that I can now testify to the amount so paid.

Q. What was the amount so paid by you?

(Objected to; overruled; exception.)

A. I was paying two men a dollar a day each. I arrived in Brewer on the 22d day of April, 1869. The repairs made at Brewer were completed June 3, 1869.

140 Q. Were any other repairs put upon her at Brewer than such as were rendered necessary by the injuries received by the collision?

(Objected to; sustained, as he is not a shipwright, and the shipwright is the best evidence.)

I know what repairs were done on her. I did not all the time supervise the repairs that were put on her. I was present twenty days as master, looking after the repairs.

Q. What was the value of the vessel when repaired?

(Objected to; sustained.)

Her sails were badly chafed, and so was her rigging, in consequence of the collision.

I had that suit of sails made for me; and I have bought sails before.

Q. What was the amount of the injury to the sails?

(Objected to; sustained, until it is shown whether they were repaired or not.)

The sails and rigging were not repaired, except the mainsail, which was repaired.

Q. How much did you pay for the repairs to the mainsail?

A. I can't tell; I don't know.

Q. What was the amount of the injury to the other sails?

(Objected to; sustained. The rule is, how much would it cost to repair them, if they could be repaired?)

I negotiated for the freights of my vessel, and have done so since I became master. I was acquainted with rates of freight to be procured.

141 Q. Were you acquainted with the rates at which vessels chartered, and were being chartered, at this time?

A. Not the rate per day nor by the month. My vessel was engaged in the carriage of freight at the time of the collision; not chartered.

Q. What was the value of the use of Abbie S. Oakes per day for

carriage of goods on freight at that time of collision and while she was undergoing repairs?

(Objected to; sustained, as this question does not include the proper rule or measure of damages for detention.)

I could have procured freights for my vessel while she was undergoing repairs. I could have got freights on lumber from Bangor to New York $4 or $5 per thousand. I could have carried from 87,000 to 96,000 feet of lumber. I have made the round trip from Bangor to New York in 4 weeks, and have been 6 weeks in making the round trip; $4 to $5 freight per thousand is from Bangor to New York.

Q. Could you have procured freights for your vessel during that interval which would have yielded the same compensation per diem to the vessel?

(Objected to.)

A. I know only about the Bangor market at the time. I have been from Bangor to New York many times in this schooner, and I consider five weeks an average round trip. From the time I arrived in Brewer to the time the repairs were completed I could have got such freights. The current daily expenses of running the vessel was about $5 per day.

Q. How near to the time of collision had you let your vessel to charter?

A. December, 1868, to January, 1869, I had let my vessel to charter.

Q. At what rate?

(Objected to.)

142 Q. Was that by written charter-party?

A. It was. I have it not here. I have been into Portsmouth with this vessel on my way to Warren, Rhode Island, from Bangor.

Q. How long would it have taken you to go from the point of collision to Portsmouth, N. H., the balance of your voyage?

(Objected to.)

A. From four to ten days.

I left Baltimore on Sunday morning, and was sunk here on the next Saturday morning.

Cross-examined by M'r Huntley:

I sailed the Abbie S. Oakes on shares. I and the mate victualed and manned her, and paid over to the owners two-fifths of her earnings after paying port-charges. I came into New York on that trip on account of stress of weather. In that time of year the usual route would not be outside of Long Island. I anchored just before dark on Friday night, and the collision occurred between six and seven the next morning.

The vessel sunk in a very few minutes after the collision. She settled down out of sight except about fifteen feet of mast, and she drifted. I next saw her at Hunter's Point, in charge of the tow-boats Uncle Abe and Dan Brown had her in charge. This was on Saturday, between ten and eleven o'clock, the same day she was sunk. These two tugs picked her up and towed her in. I do not know where they picked her up. Don't recollect that they told me where they picked her up, nor the hour of the day they picked her up. I payed the two $200 for their towage, $100 a piece.

A. Do you mean to say that, without knowing how far they towed her, or how long they were engaged in towing her, you agreed to pay and did pay them $200?

A. I don't recollect about that particular. I fixed the price
143 myself. One boat charged me $600, the other $100. She was towed ashore on the flats at Hunter's Point, and I could get onto

her wales. It was about high water when I saw her there, between ten and eleven o'clock. She remained there till low water. Her deck was out about down to her masts. She lay on her port side. She was removed to Atlantic Basin on the following Monday. Between the time I first saw her at Hunter's Point and up to the time she started for Atlantic Basin there had been something done to her.

Q. State particularly what was done to her while she lay at Hunter's Point, between Saturday and Monday.

A. At high water Saturday night, Baxter & Son, whom I had engaged, came with two tug-boats and towed her as far on the flats as they could at high water. The next day they came again with two boats and towed further, and rolled her over on to her starboard side, (this was Sunday.) They boarded her up, canvassed her, battened it, pumped her out, and towed her to the wharf, and put alongside the wharf at Hunter's Point; got through after dark Sunday evening.

They used steam-pumps. When they got her pumped out the wound still extended below the water-line. After that, Sunday evening, she was pumped out again, but nothing was done to her by way of repairs; she was pumped out by steam pumps; she was taken on Monday from there to Atlantic Dock, under my own direction. Baxter & Son had completed their service before this time.

Baxter & Son towed her down to Atlantic Dock, and they laid by her pumping her until she was discharged; arrived at Atlantic Dock between 2 and 3 p. m.; Baxter & Son left her Monday evening—the same Monday.

Baxter & Son had nothing to do with her after Monday evening, except to loan me some chains and some stuff I wanted to get the vessel home with.

I made a contract with Baxter & Son for what I wanted them
144 to do; I made it on Saturday on the wharf at Hunter's Point; this was after she had been towed on the flats and before Baxter & Son had touched her. I asked them to raise my vessel. They made me an offer to put the vessel along a wharf where there would be shoaler water. The offer was $800, and I agreed to give it.

I did not know at this time that any of her cargo had been lost out. I did not ask anybody else what they would do it for; that agreement was made nearly to sundown Saturday night; the schooner, under that contract, was put along the wharf at Hunter's Point nearly 9 o'clock on Sunday night. Baxter & Son commenced their work before high water, on the flood-tide that night. I was around there all the time from Saturday night till she was put alongside the wharf. They worked that night during the high tide, and after, and came again on Sunday at high water and worked.

I paid them the $800, I think, in a check. H. W. Loud & Co. gave them that check. I saw the bill paid, and they signed the receipt.

Baxter & Son made no other contract with me for any other service.

They started with her about 12 o'clock noon, from Hunter's Point, and got to Atlantic Dock, and left us about 10 o'clock Monday evening. It took two boats to tow us down, one pumping and the other towing. For this service of the two tugs I paid $150; paid them altogether $950. They kept their steam-pumps going all the time. One tug staid by us all the time while at Atlantic Dock, and the other left about 3 or 4 o'clock that Monday afternoon. This price of $150 was fixed upon after the service was completed and before I left New York. It was fixed between the inspector of the State of Maine and Baxter's folks. I was present. The marine inspector thought he could get it done less than I could. I

think M'r Harriman, the inspector, first said he would give $150. Baxter & Son took him up. I did not attempt to get anybody else to
145 perform that service. My vessel lay at Atlantic Dock some fourteen days or more, I suppose. I could tell by the wharfage paid. On looking at the wharfage I paid, I find it was sixteen days. We lay there sixteen days. I know it, because sixteen days' wharfage was paid. I do not now fix it from any other data. I arrived at the Atlantic Dock March 29th. I looked at a bill to refresh my recollection as to number of days I staid at Atlantic Dock. It is dated April 10th. I do not say that the bill was made out the day of its date.

Q. Look at the paper and state the date of the cancellation of the stamp.

(Objected to on the ground that the paper is the best evidence of its own contents; overruled; exceptions.)

A. The tenth of April.

Q. Can you now explain the apparent discrepancy of your statement as to the date of the bill and the number of days' wharfage?

(Objected to; sustained.)

Q. Will you state what there is in the paper which you looked to to refresh your recollection, which enabled you to say that you lay at the dock sixteen days?

A. I correct that. It was fifteen days. I should have to look at another paper which shows the date of my towage from Atlantic Dock to Hunter's Point again.

From the time Baxter & Son left me at Atlantic Dock till she left there she was sold. I do not recollect the day; I think it was made about one day before I was towed from there. No repairs were done to her until after the sale. Before she was towed to Hunter's Point her bow was repaired some, her bowsprit reset, and jibboom rigged out. My crew and I do this. No one did anything to her till I got to Hunter's Point again.

Q. By what authority was the sale of the schooner made at Atlantic Dock?

146 It was thought by all concerned if she would fetch anything so that we could let her go, to let her go. A man sent on here to act as agent for the owners of three-quarters; Joseph Oakes and myself concluded to make the sale. No one else that I think of. This conclusion was arrived at; cannot tell at what date; it might have been a week and it might not. I cannot state the number that attended the sale with any degree of certainty. I do not recollect the auctioneer's name. H. W. Loud bid her off. That is the man whose name was signed to the paper which refreshed my recollection. Others bid on the vessel. Some carpenters there bid on her. I don't know their names. A bill of sale was afterwards given of her. It was executed on behalf of all the owners. I now own one-quarter of the Abbie S. Oakes. Before the collision I owned one-quarter. Her present owners are the same as they were at the time of the collision. I received a bill of sale from M'r Loud in December, 1869. M'r Loud bought the whole of her. He gave one bill of sale to all the owners.

FEB. 10TH, 1871.

Cross-examination of Hudson S. Rideout continued.

The Abbie S. Oakes sold for $1,165.00 at auction. I kept possession of her as master after the sale.

I lay so long at the Atlantic Dock because we were settling up, advertising for sale, &c. She was advertised in a newspaper; can't tell how

many days. The auctioneer advertised her; can't say that I read it. I heard a man read it on the day of the sale. M'r Loud bid her off for the old owners, if she did not go satisfactorily. He took possession of her, in one way, till he got his pay. He paid her bills for me.

Q. Was it at any time agreed or understood that M'r Loud should take possession of the schooner as owner?

A. He was to take possession of her as representative of the owners, at the time of the sale.

147 Q. Give the names of the owners you speak of.

A. Palmer & Johnson, Babb & Strickland, William H. Strickland & Co., George Bowen, of the firm of Bowen & Johnson, Joseph Oakes, Cha's Lane, James Nealy, Selah Walton, and myself.

With the exception of one man, these same parties owned her six months prior to the collision.

We went to Hunter's Point from Atlantic Dock to see how bad her bottom was injured. Joseph Oakes and myself advised having her repaired at Brewer, Maine; we decided this in New York.

It was determined before the sale to take her to Brewer, unless she brought at the sale the price to suit.

I don't know that M'r Oakes and I fixed a price to suit. I then went to New Haven, and had nothing done to her except what I did to her myself. Joseph Oakes repaired her in Maine, at Brewer; he is here; is a ship-carpenter.

After her repairs at Brewer, the first voyage made in her was to Rockport, Mass., with a cargo of lumber. She was built for the general coasting trade; she has and had lumber ports in her bows.

I have carried grain in her since this collision; carried corn from New York to Winterport, Maine, this last fall; carried corn from New York to Belfast on the second trip after repairs. The Abbie S. Oakes was built in 1868 at Brewer, Maine. I know it because I put the spars into her myself, and bought the rigging; that was the first I knew of such a schooner; there had been no schooner Abbie S. Oakes before that. I did not see her keel laid; did not see her planked up.

Q. Was not this a rebuilt vessel?

A. She was not called so.

(Question repeated.)

A. I don't know anything about the vessel. She was painted, rigged, and I put the spars into her.

Q. Was it not, at that time, understood by and stated to you

148 that this was an old vessel built over?

A. It was not.

A. It was stated that she was a new vessel, with old timbers worked into her. Joseph Oakes, the builder, stated that to me. I then bought in her; bought one-quarter interest. I paid down cash for hull and spars, and she was to run to pay her top bills. I paid between $990 and $1,000 cash for her hull and spars; rather, let me say, I took three quarters of her, and got her taken up, reserving one-quarter to myself. I paid nearly $3,000 for the three-quarters interest in her. Her earnings have not yet paid for her top work. It is admitted by the claimants that the quantity of corn on board the Abbie S. Oakes, at the time of the collision, was 4,558 bushels, by weight of 56 pounds to the bushel—the amount mentioned in bill of lading. There were four men all told, including myself, constituted the schooner's complement. Two of these men were hired. The men I hired I paid $30 per month apiece. The Abbie S. Oakes was not insured. From the time she was built to the time she met with collision, she had not been ashore, or met with any

strains to injure her. At Hunter's Point, the second time, I put a little zinc over her canvass.

Redirect:

She had suffered no damage before the collision.

Q. Will you produce the paper which you stated yesterday refreshed your memory in regard to wharfage?

A. I will, and now produce it. (It is offered for identification, marked by the commissioner, "No. 2, J. A. O.")

Q. Explain, if you can, how that paper, bearing date April 10, 1869, enables you to refresh your recollection concerning the fifteen days' wharfage.

(Objected to; overruled; exception.)

149 A. I went into Mr. Loud's the morning before I started for home, and told them there was fifteen days' wharfage at Atlantic Dock I wanted them to pay for me, when the bill for wharfage was presented; they took this bill, which they had previously made out, and put the amount I told them on it, which was the correct number of days' wharfage. At the time I made the $800 contract, the Abbie S. Oakes lay on her beam-ends full of water, i. e., her starboard wales were out, her lame side was down, and could not see how badly she was damaged, nor could they when we made the bargain; she was on the ground; this was Saturday, between four o'clock and sundown.

Q. Did you know of any other persons in that vicinity engaged in the wrecking business or raising of vessels?

(Objected to; overruled.)

A. I did not. There were about 150 persons at the sale of Abbie S. Oakes. I should say eight or ten persons made bids at that sale. I never had any repairs done to any vessels here in New York. I lost, by the sinking of the vessel, charts to the amount of $40. I lost two books worth $9; lost my bedclothes, worth $15; lost three or four suits of clothes, worth $150. That is all of my personal effects. I lost $100 worth of provisions belonging to myself and mate.

Recross:

There were several vessels lying at Atlantic Dock while I was lying there—men employed on board of them. Don't know whether any of these men were present at the day of sale or not. Some of these 150 men came from New York to the sale. H. W. Loud, S. C. Loud were there—not brothers. I saw carpenters with whom I had talked about repairing the vessel; their names I can't give now.

Q. How many charts were there?

150 A. I don't know here. The two books—Coast-Pilot and Epitome. I did not see this wearing-apparel after the collision; saw one quilt of the bedding, pretty badly injured. I had good many shirts; I'll swear that I had eight shirts, worth $3 apiece; lost suit of rubber cloth's worth $10; lost pants—can't swear to the number; lost three pairs of boots—rubber boots, wor h $4; pair calf boots, $7, and pair of thick sea boots, $5; lost six pairs stockings, 75 cents per pair. I think I have stated all I lost. I had flour, beef, pork, sugar, &c., outfit for the schooner, worth $100; bought the provisions myself. The top bills, when new at the time I bought in her, $1,629.33—the sails, rigging, and cordage, cables and anchors, &c.

H. S. RIDEOUT.

Subscribed and sworn to before me this 10th day of February, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

It is hereby stipulated, by and between the libellants and claimants, that rate of demurrage shall be $10 per day for the detention of the Abbie S. Oakes, and the number of days for demurrage is to be twenty days.

The bill of Joseph Oakes for repairs to the vessel, (amounting to $935,) in consequence of the collision, is admitted by the claimants as the amount of repairs so made to the Abbie S. Oakes, and waive any testimony or proof of the same on the part of libellants.

JOSEPH OAKES, sworn, says:

I am one of the libellants. I built the Abbie S. Oakes; she was finished October 24, 1868; there was some old timber and old plank, which was good, worked into her construction.

Q. Do you know what she cost?

A. I do.

Q. How much was it?

(Objected to.)

151 I have bought and sold vessels ever since 1837; I have built vessels and sold; I know the value of them; I saw this vessel last before the collision in November, 1868; I considered her worth $5,600; I next saw her at Atlantic Basin after the collision; I looked her over at that time.

Q. What was her condition at that time?

(Objected to.)

A. Her larboard bow was stove in as far as the forward partner beam, which was broken; she was cut down outside, as far as I could see then—a general racked condition. I repaired her at Brewer, Maine, and examined her condition thoroughly there.

Q. Could that vessel have been put in as good condition as before the collision?

(Question withdrawn.)

Q. What would it have been necessary to do to that vessel to put her in as good condition as she was at the time of the collision?

(Objected to; overruled; exception.)

A. It would have been necessary to have torn to pieces the good work that was a little strained, and replaced it with new work.

Q. How much would it have cost to have done that work?

(Objected to; overruled; exception.)

A. From $600 to $1,000.

Q. More than the amount included in the bill before referred to?

(Objected to as leading; objection sustained.)

Q. How much would it have cost for repairs if the vessel had been put into as good condition as at the time of the collision?

(Objected to; overruled; exception.)

152 A. My judgment is from $1,500 to $1,600.

Q. You have stated in your testimony that in order to have made the vessel as good as she was at the time of collision it would have been necessary to have torn to pieces the good work which was a little strained, and replace it with new work, and that would have cost from $600 to $1,000; was that work actually done?

A. No.

Q. Was she, after the repairs were actually done on this vessel, in as good condition as at the time of collision?

(Objected to.)

A. In my opinion she was not in as good a condition as she was when I last saw her, which was in November, 1868.

Q. In what respect was she not as good?
A. A broken rail, and a general strain all over.
Q. How much less was she worth in consequence of those injuries?
(Objected to; sustained; exception.)
She was in good order and condition when she went to sea in October.

Cross-examined:

Q. When you completed the repairs on the vessel after the collision was she seaworthy?
A. She was, in every way; I considered so.

JOSEPH OAKES.

Subscribed and sworn to before me this 10th day of February, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

Adjourned sine die, to be called up on notice.

153 FEBRUARY 14, 1871.

Pursuant to notice of reference. Proctors for respective parties present.

Evidence for libellants.

Hudson S. Rideout continues. Sworn:

I lost 45 fathoms of ⅞ chain, that was new, and lost 60 fathoms of ⅞ chain, second-hand chain—a good second-hand chain; lost a new anchor, weighed a little rising of 500 lbs. The value of the 45 fathoms of ⅞ new chain was $135; the second-hand chain was worth $100; the anchor lost was worth $35; all these were lost by the collision. I lost $7.92 of cabin-furniture, which was replaced. I lost $1.67 worth of ship's tools; I lost lines and stuff which I replaced for $53.55; nothing else.

Cross-examined by M'r Huntley:

I bought the 45 fathoms of the new chain lost at Bangor, Maine, of Bowen & Johnston; bought it in October, 1868: it weighed over 2,500—between 2,500 and 3,000 lbs. The second-hand 60 fathoms chain lost—I got it from Joseph Oakes' yard; I don't know how old it was; one vessel before had used it; there were about 3,000 lbs.; lost a new anchor; bought it of Bowen & Johnston, in 1868; I knew the weight of it by going to the American Lloyds; these lines, which were replaced, were new in October, 1868; in replacing the lines lost I got no more than was necessary to replace. When the vessel was picked up I noticed that the anchors were lost; they were fastened to the mast; they parted when she went down.

H. S. RIDEOUT.

Subscribed and sworn to before me this 13th day of Feb., 1871.

JOHN A. OSBORN,
U. S. Commissioner.

Adjourned to Tuesday, Feb. 21, 1871, at 10 a. m.

154 MAY 23, 1871.

LEANDER B. SHAW, called by libellants and sworn, says:

In the year 1869 I was warehouseman proprietor of the Excelsior Stores, Atlantic Dock; we have a dryer at the store; I think that there was but one at the Atlantic Dock at that time.

I recollect the drying of a cargo of corn of the Abbie S. Oakes; we dried it at the request of the captain of the vessel; I made arrangements with the captain as to the price.

The arrangement was 25 cents per bushel, and ¾ of a cent per bushel for discharging from the vessel.

(Objected to.)

The regular price is 25 cents per bushel for drying wet corn; that was our price; it was worth all we charged to dry that cargo of corn—25 cents per bushel.

We made the contract to take it from the vessel and dry it; this included all the handling.

I don't recollect the name of the captain, but I do the name of the vessel; I think it was the 29th of March, 1869, I saw the name of the Abbie S. Oakes on the vessel. We dried the corn—3,047 bushels and 41 lbs. of corn.

We weighed the corn after it was dry, and it weighed 3,047 bushels and 41 lbs. The total amount is $784.61. (Put in evidence, marked "Exhibit A, J. A. O.")

I have been in the drying business six or seven years; been in the habit of drying cargoes of corn during all that period; ours is a caloric dryer, and in that respect it differs from others, and we claim it is superior to others in drying corn. After it was dried we delivered the corn to a canal-boat, Medina.

Cross examined:

I don't know what others charge for drying corn; we have a uniform price for wet corn.

155 Baker & Crowell paid me my bill.

LEANDER B. SHAW.

Subscribed and sworn to before me May 23, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

STEPHEN K. LANE, sworn, says:

I am member of the firm of Lane, Son & Co., flour, grain, and commission merchants, including corn. I have personally been engaged in buying and selling corn. I sold corn on 9th April, 1869; it was 3,047 bushels and 41 lbs. I sold in M'r Shaw's store dried corn, the cargo of the Abbie S. Oakes, as they said. I *I* sold it by sample; sold it on the Corn Exchange, during exchange hours; there was competition in the bids for the corn. I sold it for 79 cents per bushel; that was a fair price for it; there were 3,047 bushels and 41 lbs.; the gross amount of sale $2,419.13; the net amount was $2,401.49; my commission was ½ cent per bushel. After it was sold it was taken from warehouse and went on board of the Medina.

STEPHEN K. LANE.

Subscribed and sworn to before me this 23d day of May, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

156 EXCELSIOR STORES AND STEAM ELEVATOR,
NO. 70 TO 92 SOUTH PIER,
Atlantic Docks, Brooklyn, April 10, 1869.

Mess'rs Baker & Crowell to Shaw & Co., D'r.

New York office, No. 5 Water street.

For storage and charges as follows: On—

M'ch 29–April 10. 3,047 41/100 bu. corn, storage and drying, 25c..	761 75
Elevation, 4 c.....	22 86
	784 61

Ex. sch'r Abbie S. Oakes.
Paid Ap'l 12, '69.

SHAW & CO.
AYRES.

Invoice of yellow corn shipped per schooner Abbie S. Oakes, by Thomas R. Matthews & Sons, per order and for account of and consigned to Mess'rs Cha's Robinson & Son, Portsmouth, N. H.:

4,810 bus. y. corn, w't 4,558 $\frac{4}{56}$, at 85 c $3,874 36

CHARGES.

Tallying and weighing $12 02
Commission, 1¼ 48 43
——— 60 45

$3,934 81

E. E.
Baltimore, March 20th, 1869.
(Signed) THO'S R. MATTHEWS & SONS,
Per H'D SEWELL.

STATE OF NEW HAMPSHIRE,
Rockingham, ss:

DEC. 27, 1870.

157 Then Charles Robinson, personally appearing, solemnly made oath that the foregoing is a true copy of the invoice of corn consigned to C. Robinson & Son by Thomas R. Matthews & Sons.

Before me.

WILLIAM H. ROLLINS,
Justice of the Peace.

The reason why original not sent is that it is contained in an invoice-book. The latter can be procured, if necessary, of C. Robinson & Son, Portsmouth.

United States district court, southern district of New York.

ROBINSON
vs.
STEAMBOAT CITY OF HARTFORD.

It is stipulated that the within document be received by the commissioner as evidence of the value of the cargo of the schooner Abbie S. Oakes to the amount of three thousand nine hundred and thirty-four $\frac{81}{100}$ dollars, ($3,934.81.) and all further proof as to the value of said cargo is waived.

Dated March 15, 1872.

R. H. HUNTLEY,
Proctor for Claimants.

THOMAS R. MATTHEWS & SONS,
COMMISSION & SHIPPING MERCHANTS,
18 *Bowly's Wharf, Baltimore.*

4,810 bus. yellow corn, weighing 4,558 $\frac{04}{100}$.

Shipped in good order and condition, by Thomas R. Matthews & Sons, on board the good schooner called the Abbie S. Oakes, whereof
158 Rideout is master for the present voyage, now lying in the port of Baltimore, and bound for Portsmouth, M'e, to say: Forty-eight hundred and ten bushels yellow corn, weighing forty-five hundred and fifty-eight $\frac{04}{100}$ bus., Balt. weight, being marked and numbered as in the margin, to be delivered in the like good order and condition at the aforesaid port of Portsmouth, (the dangers of the seas only excepted,) unto Mess'rs Charles Robinson & Son, or assigns, he or they paying freight for the said goods at the rate of ten cents per bushel of 56 lbs., without per cent. primage and average accustomed.

In witness whereof the master or purser of the said vessel has affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated Baltimore, March 20, 1869.

H. S. RIDEOUT.

The claimants waive all proof other than the within bill of lading as to the quantity of corn on board the Abbie S. Oakes at the time of the collision, and no objection is made to the proof of the bill of lading.

Dated March 2, 1872.

R. H. HUNTLEY,
Proctor for Clts.

159 United States district court, southern district of New York.

HUDSON L. RIDEOUT ET AL.
vs.
STEAMBOAT CITY OF HARTFORD.

Present, counsel for libellants and claimants.

The counsel for the claimant agree to admit, for the purposes of this cause, that the value of Capt. Rideout's time was $5 per day, he paying his own board, if anything is to be allowed.

The counsel for the libellant offers in evidence receipt of J. C. Baxter & Son for $950, dated April 9th, 1869.

Counsel for claimant of City of Hartford consents that copy of receipt shall be used with same effect as original; question of admissibility reserved.

(Copy of receipt is allowed.)

Counsel for claimants stipulate that he will not call for any other evidence of the payment of the money or the giving of the receipt, but if the bills referred to in the receipt can be produced, he desires to have them.

Received, New York, April 9, 1863, from H. W. Loud & Co., their check for nine hundred and fifty dolls. ($950) in payment of bills as rec'd for services of wrecking-steamer.

160 John Fuller against schooner Abbie S. Oakes, $950.

$800 bill
125 "
25 "

$950

[Internal-rev. stamp U. S., cancelled.]

J. C. BAXTER & SONS,
308 *West St.*

R. H. HUNTLEY,
Proctor for C. of H.

Filed March 26th, 1872.

Commissioner's report.

United States district court, southern district of New York.

HUDSON S. RIDEOUT ET ALS., LIBELLANTS,
ag'st.
THE STEAMBOAT CITY OF HARTFORD, HER engine, &c.

In pursuance of a decretal order made in the above-entitled cause on the sixteenth day of December, in the year of our Lord one thousand eight

hundred and seventy, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages by them sustained by reason of the injury to the schooner Abbie S. Oakes, caused by the collision in the amended libel set forth; and also for the pending freight due said libellants on the cargo on board said schooner at the time of said collision; and also for the loss of certain supplies, clothing, charts, and other property on board of said schooner at the time of said collision; and to report thereon to this court with all convenient speed:

161 I, John A. Osborn, the commissioner to whom the matter was referred, do report, that I have been attended by the proctors for the respective parties, and by the witnesses, and have taken and examined the testimony offered in support of the libellants' claim for damages aforesaid, and do find that there is due to the libellants as follows:

Expense of raising vessel and cargo at Hunter's Point...		$800 00
Towing, East River to Hunter's Point.....		200 00
Towing and pumping, Hunter's Point to Atlantic Dock..		150 00
Wharfage at dock fifteen days.....		11 10
Wharfage and watching, Hunter's Point.....		5 00
Repairs actually made.....		935 00
Wages of men until sale.....		30 00
Board of captain and men until sale.....		105 00
Two men from 11th of April to 22d of April, $1 per day each.....		22 00
Captain Rideout, supervising repairs twenty days, $5 per day.....		100 00
Loss of captain's charts.....		40 00
" " books.....		9 00
" bed-clothes.....		15 00
" suits of clothes.....		150 00
" provisions.....		100 00
" shirts.....		24 00
" rubber clothes.....		10 00
" boots.....		16 00
" stockings.....		4 00
" anchors.....		35 00
" cabin furniture.....		7 92
" ship's tools.....		1 67
" lines, &c.....		53 55
162 Loss of 45 fathoms $\frac{7}{8}$ new chain.....		135 00
" 60 fathoms $\frac{7}{8}$ second-hand chain.....		100 00
		$3,059 24
Freight on 4,458 $\frac{84}{100}$ bushels corn, 10 cts.....		455 80
		$3,515 04
Interest thereon from June 3d, 1869, to March 28th, 1872..		594 00
		4,109 04
Additional cost of repairs to make the vessel as good as before collision.....	$600 00	
Demurrage, 20 days, at $10 per day.....	200 00	800 00
		$4,909 04

CREDIT.

Proportion of expense of saving vessel and cargo contributed in general average by cargo.....	$600 00	
Pro-rata freight for cargo delivered safely in New York.....	150 00	
Additional expense, which would have been incurred in earning freight, 8 days, at $5 per day	40 00	$790 00
		$4, 119 04

The sum total reported in favor of libellants is the sum of forty-one hundred and nineteen dollars and four cents.

All which is respectfully submitted.

JOHN A. OSBORN,
U. S. Commissioner.

NEW YORK, *March 26th*, 1872.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants.

163 *Commissioner's report.*

District court of the United States for the southern district of New York.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., and the Steam-tug Unit, her tackle, &c.

In pursuance of a decretal order made in the above-entitled cause on the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for damages by him sustained by means of the loss and injury to the cargo of corn on board of the schooner Abbie S. Oakes, at the time of the collision, as against the City of Hartford, and to report thereon to this court with all convenient speed:

I, John A. Osborn, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellant and respondent and the witnesses, and have taken and examined the testimony offered in support of the libellant's claim for damages aforesaid, and do find that there is due to the libellant as follows:

164	Value of cargo, as per invoice		$3, 934 81
	By sale of 3,047 $\frac{47}{100}$ bushels corn.....	$2, 401 49	
Less expenses of elevation, storage, and drying		784 61	
"	am't paid for freight.....	150 00	
"	salvage expenses.....	600 00	
		$1, 534 61	
Net			806 88
			3, 067 93
Interest thereon from March 27th, 1869			636 86
Making in all the sum of thirty-seven hundred and four $\frac{79}{100}$ dollars			$3, 704 79

Dated the 16th day of March, A. D. 1872.

All of which is respectfully submitted.

JOHN A. OSBORN,
U. S. Commissioner.

SCUDDER & CARTER,
Proctors for Libellant.

Claimants' exceptions to the commissioner's report.

United States district court, southern district of New York.

HUDSON S. RIDEOUT ET AL.
against
THE STEAMBOAT CITY OF HARTFORD AND Steam-tug Unit.

The claimants except to the commissioner's report herein, dated March 26th, 1872, under the order of this court heretofore made and entered, and specify their exceptions as follows:

165 First. That the item of $600 additional cost of repairs to make the vessel as good as before collision is a speculative and illegal charge, and should not be allowed.

Second. That the item of $455.80, allowed as freight on 4,558 bushels of corn, at 10 cents a bushel, is without support in the evidence, and is wholly wrong and illegal, and should not be allowed.

Third. That the item of $100, charged for the service of Captain Rideout in supervising repairs, is illegal and improper, and should not be allowed.

Fourth. That the item of $22, allowed as wages of two men from April 11th to 22d, is wholly improper and illegal, and should not be allowed.

Dated New York, March 30th, 1872.

RICHARD H. HUNTLEY,
Proctor for Claimants.

Exceptions overruled May 8, 1872.

S. B.

166 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy-two.

Present, Hon. Samuel Blatchford, district judge.

HUDSON S. RIDEOUT, JOAB W. PALMER, George Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland & Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Nealley, Cha's M. Doane, and William Atwood
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, and the Steam-tug Unit, her tackle, apparel, and furniture.

This cause coming on to be heard upon the report of John A. Osborne, esquire, United States commissioner, to whom, by a decretal order made and entered herein, it was referred to ascertain and report to this court the amount of damages sustained by the libellants by the collision in the pleadings mentioned, and upon the exceptions to said report filed on the part of the claimants of said steamboat City of Hartford, her tackle, etc.

167 After hearing Richard H. Huntley, proctor for the said claimants, and Evarts, Southmayd & Choate, proctors for said libellants, and after due deliberation had thereon, it is ordered, adjudged, and decreed that all of said exceptions be, and the same are hereby, disallowed, and that the report of said commissioner be, and the same hereby is, in all things confirmed.

And it is further ordered, adjudged, and decreed that the libellants do recover against the steamboat City of Hartford, her tackle, apparel, and furniture, the sum of four thousand one hundred and nineteen dollars and four cents, being the amount reported due the libellants, with interest thereon from the 26th day of March, 1872, (the date of the said report,) to the date of this decree, being the sum of fifty-six dollars and twenty-nine cents, with their taxed costs, which have been taxed at the sum of two hundred and thirty-four dollars and nineteen cents; making together for principal, interest, and costs the sum of four thousand four hundred and nine dollars and fifty-two cents; and that said steamboat City of Hartford, her tackle, apparel, and furniture, be condemned therefor.

And on like motion it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against The Hartford and New York Steamboat Company, the principal, and John W. Frothingham and Charles S. Baylis, the sureties in their bond given on the discharge of the property arrested, for the sum of sixteen thousand dollars, the amount of their said bond executed in discharging the said steamboat from custody.

And on like motion it is further ordered that unless an appeal be taken from this decree within the time limited and prescribed by
168 the rules of this court, the libellants have execution to enforce satisfaction of this decree.

And it is further ordered, adjudged, and decreed that the libel as against the steam-tug Unit, her tackle, apparel, and furniture, be, and the same is hereby, dismissed with two hundred and twenty-four dollars and thirty-two cents, the taxed costs of the claimant of the said tug; and that out of the proceeds of the stipulation of the libellants for costs, when paid into the registry of this court, the clerk do pay to the claimants of the said tug, or to their proctors, the sum last aforesaid, with interest thereon from the date of the taxation of said claimants' costs to the time of such payment; and that unless an appeal be taken from the decree within the time limited and prescribed by the rules and practice of this court, the stipulators in behalf of the said libellants forthwith pay into the registry of this court the amount of their said stipulation, and that the clerk distribute the proceeds thereof in satisfaction of this decree as to said steam tug Unit.

SAMUEL BLATCHFORD.

At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on Monday, the first day of April, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable Samuel Blatchford, district judge.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., impleaded, &c. } 22492.

169 The time to file exceptions to the commissioner's report herein having expired, and no exceptions having been filed thereto, now, on reading the report on file of John A. Osborn, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages for loss and injury to cargo of corn on board schooner Abbie S. Oakes, with interest, the sum of three thousand seven hundred and four $\frac{79}{100}$ dollars; on motion of Scudder & Carter, proctors for the libellant, it is ordered that the report be in all things confirmed, and that the libellant recover in this action against the steamboat City of Hartford, her tackle, &c., the amount reported

due, with additional interest from date of report to date of this decree, amounting to eight $\frac{52}{100}$ dollars, together with his costs to be taxed, which have been taxed at the sum of one hundred and forty-two $\frac{64}{100}$ dollars, and that said steamboat City of Hartford be condemned therefor.

And on like motion it is further ordered that in pursuance of the act of Congress passed March 3, 1847, a summary judgment be, and the same is hereby, entered against the Hartford and New York Steamboat Company, the principal, and John W. Frothingham and Charles S. Baylis, the sureties on their bond, given on the discharge of the property arrested, for the sum of nine thousand dollars, the amount of their said bond, executed on discharging the said steamboat from custody.

And on like motion it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, the libellant have execution to enforce satisfaction of this decree.

SAMUEL BLATCHFORD.

SCUDDER & CARTER,
Proctors for the Libellant.

Filed April 1, 1872.

170 U. S. district court, southern district of New York.

HUDSON S. RIDEOUT ET AL.
vs.
THE STEAMBOAT CITY OF HARTFORD, &c., and the Steam-tug Unit, &c.

Take notice that the libellants in the above cause intend to, and do appeal to the next circuit court of the United States for the southern district of New York, in the second circuit, from the decree entered herein on the sixteenth day of December, 1870, dismissing the libel in this cause as against the steam-tug Unit, her tackle, &c.

New York, December 24, 1870.

Yours, &c.,

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants and Appaallnts.

To GEORGE F. BETTS, Esq.,
Clerk U. S. District Court.
Mess'rs BEEBE, DONOHUE & COOK,
Proctors for Claimants of said Unit.

Filed Dec. 24, 1870.

United States district court, southern district of New York.

HUDSON S. RIDEOUT AND OTHERS
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, and the Steam-tug Unit, her tackle, apparel, and furniture.

171 Take notice that the libellants intend to, and do hereby, appeal to the next circuit court of the United States for the southern district of New York from so much of the final decree entered in this cause on the 21st day of June, 1872, as adjudges and decrees that the libel therein, as against the steam-tug Unit and her tackle, be dismissed with two hundred and twenty-four dollars and thirty-two cents, the taxed costs of the claimants of the said tug, and that out of the proceeds of the stipulation of the libellants for costs, when paid into the registry of this court, the clerk pay to the claimants of the said tug, or to their proctors, the sum last aforesaid, with interest thereon from the

date of the taxation of said claimants' costs to the time of such payment; and that, unless an appeal be taken from the said decree within the time limited and prescribed by the rules and practice of this court, the stipulators in behalf of the said libellants forthwith pay into the registry of this court the amount of their said stipulation, and that the clerk distribute the proceeds thereof in satisfaction of the said decree as to said steam-tug Unit; and said libellants appeal to said circuit court from each and every part of such portion of the said decree.

New York, June 22, 1872.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants.

To GEORGE F. BETTS, Esq.,
Clerk of U. S. District Court.
Mess'rs BEEBE, DONOHUE & COOKE,
Proctors for Claimants of Tug Unit.
R. H. HUNTLEY, Esq.,
Proctor for Claimants of Steamboat City of Hartford.

Filed June 22, 1862.

172 District court of the United States for the southern district of New York.

HUDSON S. RIDEOUT, JOAB W. PALMER, GEORGE Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, and Philo A. Strickland, who in the libel is called John Doe, composing the firm of William H. Strickland & Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Atwood,
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c.

Please take notice that the claimant appeals from the final decree of this cause entered on the 21st day of June, 1872, and from each and every part thereof, to the next circuit court to be held in said district.

Dated New York, 25th June, 1872.

RICHARD H. HUNTLEY,
Proctor for Claimant.

To GEORGE F. BETTS, Esq., *Clerk.*
EVARTS, SOUTHMAYD & CHOATE, Esq's,
Proctors for Libellants.

Filed June 25, 1872.

173 District court of the United States for the southern district of New York.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, &C.

Please take notice that the claimant appeals from the final decree of the court in this cause to the next circuit court.

Dated April 2d, 1872.

RICHARD H. HUNTLEY,
Proctor for Claimant.

To GEORGE F. BETTS, Esq., *Clerk.*
SCUDDER & CARTER, Esq's,
Proctors for Libellant.

Know all men by these presents that we, Hudson S. Rideout, Joab W. Palmer, George Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, and Philo A. Strickland, Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Nealley, Charles M. Doane, and William Atwood, libellants, and Henry W. Loud, are held and firmly bound unto Philip H. Rockefeller and Mary Thomas, claimants and owners of the steam-tug Unit, her tackle, &c., in the sum of five hundred dollars, to be paid to the said Philip H. Rockefeller and Mary Thomas, their executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-fourth day
174 of June, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas Hudson S. Rideout and others, the libellants above named, as appellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district bearing date the twenty-first day of June, 1872, in a suit in which Hudson S. Rideout and others are libellants against the steamboat City of Hartford, her tackle, &c., and the steam-tug Unit, her tackle, &c.:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute said appeal with effect, and pay all costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

HUDSON S. RIDEOUT. [L. S.]
JOAB W. PALMER. [L. S.]
GEORGE BOWEN. [L. S.]
AARON BABB. [L. S.]
LYSANDER S. STRICKLAND. [L. S.]
WILLIAM H. STRICKLAND. [L. S.]
PHILO A. STRICKLAND. [L. S.]
BENJAMIN JOHNSON. [L. S.]
JOSEPH OAKES. [L. S.]
SELAH WALTON. [L. S.]
JAMES M. NEALLY. [L. S.]
CHARLES M. DOANE. [L. S.]
WILLIAM ATWOOD,
By H. W. LOUD, *Agent.* [L. S.]
H. W. LOUD. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of June, 1872, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of N. Y.

175 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry W. Loud, being duly sworn, deposes and says that he resides in the eastern district of New York, to wit, at 132 State street, in the city of Brooklyn, in the State of New York; that he is a householder;

that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

H. W. LOUD.

Sworn to this 24th day of June, A. D. 1872, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of N. Y.

This bond approved as to form and amount and sufficiency of surety. Dated New York, June 24, 1872.

BEEBE, DONOHUE & COOKE,
Proctors for Appellee.

Know all men by these presents that we, The Hartford and New York Steamboat Company, by W'm H. Goodspeed, agent, and Charles S. Baylis, are held and firmly bound unto Hudson S. Rideout, Joab W. Palmer, George Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, Philo A. Strickland, Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Atwood, in the sum of ten thousand dollars, to be paid to the said Rideout, Palmer, Bowen, Babb, L. S. Strickland, W. H. Strickland, P. A. Strickland, Johnson, Oakes, Walton, Neally, Doane, and Atwood, their executors, administrators, or assignes, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eighth day of July, in the year of our Lord one thousand eight hundred and seventy-two.

176 Whereas The Hartford and New York Steamboat Company, as appellant, has appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the twenty-first day of June, 1872, in a suit in which Hudson S. Rideout and others are libellants against The Steamboat City of Hartford, her tackle, &c.:

Now, therefore, the condition of this obligation is such that if the above-named appellant, The Hartford and New York Steamboat Company, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against it as such appellant therein if it shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

HARTFORD AND NEW YORK STEAMBOAT CO.,
By W. H. GOODSPEED, *Agent.* [L. S.]
CHARLES S. BAYLIS. [L. S.]

Sealed and delivered and taken and acknowledged this eighth day of July, 1872, before me.

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles S. Baylis, being duly sworn, doth depose and say that he resides in the eastern district of New York, at No. 16 Remsen street,

Brooklyn; that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

CHARLES S. BAYLIS.

Sworn to this 8th day of July, A. D. 1872, before me.

JOHN A. OSBORN,
U. S. Commissioner.

177 This bond approved as to form and amount and sufficiency of surety.

Dated New York, July 16th, 1872.

SAMUEL BLATCHFORD, *D. J.*

Know all men by these presents that we, The Hartford and New York Steamboat Company, and John H. Frothingham and Charles S. Baylis are held firmly bound unto Charles Robinson in the sum of eight thousand dollars, to be paid to the said Charles Robinson, his executors, administrators, and assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the tenth day of April, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas The Hartford and New York Steamboat Company, as appellant, hath appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the first day of April, 1872, in a suit in which Charles Robinson is libellant against The Steamboat City of Hartford, her engine, tackle, &c.

Now, therefore, the condition of this obligation is such that if the above-named appellant, The Hartford and New York Steamboat Company, shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against it as such appellant therein if it shall fail to make said appeal good, then this obligation shall be
178 void; otherwise the same shall be and remain in full force and effect.

H. & N. Y. STEAMBOAT CO.,
By W'M H. GOODSPEED. [L. S.]
JOHN W. FROTHINGHAM. [L. S.]
CHARLES S. BAYLIS. [L. S.]

Sealed and delivered and taken and acknowledged this 10th day of April, 1872, before me.

JOHN A. OSBORN,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John W. Frothingham and Charles S. Baylis, being duly sworn, each depose and say that he resides in the eastern district of New York, and that he is worth the sum of sixteen thousand dollars over and above all his just debts and liabilities.

JOHN W. FROTHINGHAM.
CHARLES S. BAYLIS.

Sworn to this 10th day of April, A. D. 1872, before me.

JOHN A. OSBORN,
U. S. Com'r.

This bond approved as to form and amount and sufficiency of surety.
Dated New York, April 13th, 1872.

SAM'L BLATCHFORD,
District Judge.

179 Circuit court of the United States, southern district of New York.

HUDSON S. RIDEOUT, JOAB W. PALMER, George Bowen, Aaron Babb, Lysander S. Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland & Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Nealley, Charles M. Doane, and William Atwood, libellants, appellants,

against

THE STEAM-TUG UNIT, HER TACKLE, APPAREL, and furniture, Philip H. Rockefeller, and Mary Thomas, claimants, impleaded with the Steamboat City of Hartford, her tackle, apparel and furniture, The Hartford and New York Steamboat Company, claimants, appellees.

To the honorable the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully showeth that on or about the seventh day of April in the year one thousand eight hundred and sixty-nine, the above-named libellants exhibited their libel in the district court of the United States for the southern district of New York against the said Steamboat City of Hartford, her tackle, apparel, and furniture, and against the said Steam-tug Unit, her
180 tackle, apparel, and furniture, praying, among other things, for the reasons set forth in said libel, that the said court would pronounce for the claim in said libel set forth, and would condemn the said steamboat and the said steam-tug and all parties intervening for their interest in said steamboat and steam-tug respectively, for the amount of said claim with costs.

That on the ninth day of April, one thousand eight hundred and sixty-nine, the Hartford and New York Steamboat Company appeared in said suit and entered and filed their claim to the said steamboat and a stipulation for the costs of said suit, and a bond in the sum of sixteen thousand dollars, according to the act of Congress in that behalf, passed March 3, 1847, and according to the course and practice of the said district court; and that on the 20th day of the same month, Philip H. Rockefeller and Mary Thomas appeared in said suit; and on the 26th day of May, 1869, the said Philip H. Rockefeller and Mary Thomas, by Solomon Thomas, their agent, entered and filed in said district court their claim to the said steam-tug and a stipulation for the costs of said suit, and a stipulation in the sum of three thousand dollars (the appraised value of said steam-tug) according to the course and practice of the said district court.

That on the 28th day of April, 1869, the said claimants of the said steamboat filed their exceptions to the libel in the said suit, which said exceptions were, on the fourth day of May, 1869, allowed by the said district court, and that on the sixth day of May, 1869, the said libellants filed their amended libel in the said district court against the said steam-tug and steamboat.

That on the 5th day of March, 1870, the said claimants of the said steamboat filed their answer to the said amended libel in said district court, praying that the said libel be dismissed as against the said

181 steamboat, and the said libellants condemned in costs, as by reference to the said answer will more fully appear; and

That on the 28th day of May, 1870, the said claimants of the said steam-tug filed their answer to the said amended libel in the said district court, praying that the said libel be dismissed as against the said steam-tug, and the said libellants condemned in costs, as by reference to the said answer will more fully appear.

That the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on the 12th, 14th, 17th, 18th, 19th, and 20th days of October, 1870, upon the depositions and proofs taken in the said cause, and the testimony and proofs then adduced by the respective parties, and the said judge having advised thereon, afterwards, on the 16th day of December, 1870, made a decree or sentence in said cause whereby it was among other things sentenced and decreed that the libellants in said cause recover against the said steamboat City of Hartford, her tackle, &c., the damages by them sustained by reason of the injury to the vessel or schooner Abbie S. Oakes, caused by the collision in the amended libel set forth, and also for the pending freight due said libellants on the cargo on board said schooner at the time of said collision, and also for the loss of certain supplies, clothing, charts, and other property on board of said schooner at the time of said collision, together with their costs to be taxed. And it was referred to one of the commissioners of the said court to ascertain and compute, and to report thereon to said district court the amount of such damages, as by reference to the said decree will more fully appear; and it was by said decree further provided that the said libel as against the said steam-tug Unit, her tackle, &c., should be dismissed, with costs to be taxed against the libellants, as by said decree will more fully

182 appear, and that the said libellants thereupon appealed to this court from so much of said decree as dismissed the said libel as against the said steam-tug Unit, her tackle, &c.

That under the said decree reference was had to John A. Osborn, esq., a commissioner of the said court, who reported that there was due to the libellants the sum of $4,119.04, which report on the 21st day of June, one thousand eight hundred and seventy-two, was confirmed by the said district court by the final decree thereof, by which final decree it was adjudged that the said libellants recover of the said steamboat City of Hartford, her tackle, &c., the aforesaid sum of $4,119.04, together with interest and costs, amounting altogether to the sum of $4,409.52, and the said steamboat was condemned therefor, and in pursuance of the act of Congress passed March 3, 1847, summary judgment was entered against the Hartford and New York Steamboat Company, John W. Frothingham, and Charles S. Baylis, the sureties on the bond given in the discharge of said steamboat, her tackle, &c., for the sum of $16,000, and by said final decree the said libel as against the steam-tug Unit, her tackle, apparel, and furniture was dismissed with two hundred and twenty-four dollars and thirty-two cents, the taxed costs of the claimants of the said tug, and it was adjudged and decreed that out of the proceeds of the stipulation of the libellants for costs, when paid into the registry of the said district court, the clerk of said court pay to the claimants of said tug or to their proctors the sum last aforesaid, with interest thereon from the date of the taxation of said costs to the time of such payment, and that unless an appeal should be taken from the said decree within the time limited and prescribed by the rules and practice of the said court, the stipulators in behalf of the said libellants should pay into the registry of said district court the

amount of their said stipulation, and that the clerk should dis-
183 tribute the proceeds thereof in satisfaction of the said decree as to the said steam-tug Unit.

And these appellants are advised and insist that so much of the said decrees as provide for the dismissal of the said libel as against the said steam-tug Unit, with $224.32, the costs of the claimants of the said tug, and for the payment of the amount of the stipulation of the said libellants for costs into the registry of the said district court and the payment out of such registry by the clerk of the said court to such claimants of their said costs, with interest thereon as above mentioned, is erroneous, inasmuch as the said libellants were entitled to recover against the said steam-tug Unit, her tackle, &c., as well as against the said steamboat City of Hartford, her tackle, &c., the damages by them suffered by reason of the collision in the said libel set forth, because the said collision and damage was caused in part by the fault and negligence of those in charge of said steam-tug, as more particularly set forth in said amended libel.

And these appellants, for these and other reasons, appeal to the next circuit court to be held in said district, from so much of the said decree in favor of the claimants of said steam-tug as dismisses the said libel as against the said steam-tug Unit, her tackle, apparel, and furniture, with two hundred and seventy-four dollars and thirty-two cents, the taxed costs of the claimants of the said tug, and from so much thereof as adjudges and decrees that out of the proceeds of the stipulation of the libellants for costs when paid into the registry of the said court, the clerk pay to the claimants of the said tug, or to their proctors, the sum last aforesaid, with interest thereon, from the date of the taxation of said claimants' costs to the time of such payment, and that, unless an appeal should be taken from said decree within the time limited and prescribed by the rules and practice of the said court, the stipula-
184 tors, on behalf of the said libellants, forthwith pay into the said court the amount of the said stipulation, and that the clerk distribute the proceeds thereof in satisfaction of the said decree as to said steam-tug Unit, and from each and every part of such portion of the said decree. And upon the said appeal, the said libellants intend to have said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court, and they pray that the record and proceedings may be returned to the said circuit court, and that so much of the said decree as is appealed from by the said libellants may be reversed, or such other decree thereon be made as to said circuit court shall seem just, and that the said steam-tug and her said claimants may be condemned to pay the appellants their costs and damages in the premises.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants Appellants.

JOSEPH H. CHOATE,
Advocate.

CITY AND COUNTY OF NEW YORK, *ss:*

ALEXANDER JEFFERS, of said city, being duly sworn, doth depose and say that on the 29th day of June instant he served a copy of the within petition of appeal upon Mess'rs Beebe, Donohue & Cook, proctors for the claimants of the steam-tug Unit, in the within entitled action, by delivering such copy to and leaving it with a clerk in charge of the office of said proctors, at No. 68 Wall street, in the city of New York, and that at the time of such service neither of the said proctors was in their

said office; that on the 29th day of June aforesaid he served a copy of said petition upon R. H. Huntley, esq., proctor for the claimants of the steamboat City of Hartford, in said action by delivering such copy to and leaving it with a clerk in charge of the office of said Huntley, at No. 35 Pine street, in said city, and that at the time of such service the said Huntley was absent from his said office. And further deponent saith not.

185

ALEXANDER JEFFERS.

Sworn to before me this 29th day of June, 1872.

JOHN D. SWEZEY,
Notary Public, N. Y. City.

Circuit court of the United States, southern district of New York.

HUDSON S. RIDEOUT, JOAB W. PALMER, George Bowen, Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, who in the libel is called John Doe, composing the firm of William H. Strickland & Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Atwood, libellants and appellees,

against

THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., the Hartford and New York Steamboat Company, complainant and appellant.

To the honorable the circuit court of the United States for the southern district of New York:

186 The appeal of the above-named claimant and appellant respectfully showeth to this court that on or about the second day of April, 1869, the above-named libellants and appellees exhibited their libel against the steamboat City of Hartford, her tackle, etc., and against the steam-tug Unit, her tackle, etc., in the district court of the United States for the southern district of New York; that on the 28th day of April, 1869, the Hartford and New York Steamboat Company, claimants of the above-named steamboat City of Hartford, etc., filed their exceptions to said libel in said court; that on or about the fifth day of May, 1869, the above-named libellants and appellees exhibited their amended libel in said court, claiming over $50, and praying, among other things, that the said City of Hartford and the said Unit might be condemned and sold to pay the said libellants' claim in said libel mentioned, and costs.

That under process issued out of said court the said vessel City of Hartford was attached by the marshal, and that the above-named claimants appeared for her, and on the fifth day of March, 1870, filed in said court its answer to said amended libel, praying that the said libel might be dismissed, with its costs in that behalf, as by reference to said libel and answer will more fully appear.

That the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on or about the 14th, 17th, 18th, 19th, and 20th of October, 1870, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the re-

spective parties; and the said judge having advised thereon, did, on the sixteenth day of December, 1870, make his decree in said cause in favor of the libellants against this claimant, and ordered a reference to ascertain and compute the amount of damages to which said libellants might be entitled under said decree; and the libel against the steam-tug Unit was dismissed with costs.

187 That under the decree a reference was had to John A. Osborn, esq., United States commissioner for the southern district of New York, who reported that said libellants were entitled to $4,119.04; that on the 30th day of March, 1872, this claimant duly filed its exceptions to said report, which exceptions were disallowed, and the report of the commissioner confirmed by said court, by the final decree thereof, on the 21st day of June, 1872, whereby it was decreed that the said libellants recover of this claimant the $4,119.04, the amount reported due by said commissioner, together with $56.29 interest thereon, and costs taxed at $234.19, making in all the sum of four thousand four hundred and nine dolla's and fifty-two cents.

And this appellant is advised and insists that the said decree is erroneous, inasmuch as said libellants were not entitled to said damages, or any damages, but said claimant was entitled to have said libel dismissed with its costs in that behalf.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of said Rideout, Palmer, Bowen, Babb, L. S. Strickland, William H. Strickland, Doe or P. A. Strickland, Johnson, Oakes, Walton, Neally, Doane, and Atwood, to the next circuit court to be held in the said district; and on the said appeal they intend to make new allegations in the circuit court, and introduce the same and new and further proofs; and they pray that the said decree and every part thereof may be reversed with costs, or such other decree thereupon be made as to the said circuit court shall seem just; and that the said appellees be condemned to pay this appellant its costs and damages in the premises.

And this appellant prays that the record and proceedings may be returned to the said circuit court, and that the said decree may be

188 reversed or such other decree thereupon be made as to the said circuit court shall seem just, and that the appellees may be condemned to pay to this appellant its costs and damages in the premises.

RICHARD H. HUNTLEY,
Proctor for Claimant and Appellant.

Circuit court of the United States, southern district of New York.

CHARLES ROBINSON, LIBELLANT AND APPELLEE,
vs.
THE STEAMBOAT CITY OF HARTFORD, HER TACKLE, &c., The Hartford and New York Steamboat Company, claimants and appellants.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of the above-named claimants and appellants respectfully showeth to this court that on or about the eighth day of April, 1869, the above-named libellant and appellee exhibited his libel against the steamboat City of Hartford, her tackle, &c., and against the steam-tug Unit, her tackle, &c., in the district court of the United States for the

southern district of New York; that on the thirtieth day of April, 1869, the Hartford and New York Steamboat Company, claimants of the above-named steamboat City of Hartford, filed their exceptions to said libel in said court; that on or about the thirteenth day of May, 1869, the above-named libellant and appellee exhibited his amended libel in said court, claiming over $50, and praying among other things that the said City of Hartford might be condemned and sold to pay the said libellant's claim in said libel mentioned, and costs.

189 That under process issued out of said court, the said vessel was attached by the marshal, and that the above-named claimants appeared for her, and on the seventeenth day of December, 1870, filed in said court a stipulation of the libellant's proctors, to wit, that the answer in a certain cause in said court brought by Hudson S. Rideout and others against said vessel for alleged damages arising from the same collision, for damages arising from which this cause also was brought, should be considered and treated as the answer of the claimants in this cause also, which answer prayed that the libel be dismissed, with their costs in that behalf, as by reference to said libel, stipulation, and answer will more fully appear.

That the said cause came on to be heard, together with the above cause of Rideout et al., &c., before the honorable Samuel Blatchford, judge of the said district court, on or about 14th, 17th, 18th, 19th, and 20th of October, 1870, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge, having advised hereon, did, on the 16th day of December, 1870, make his decree in said cause in favor of the libellant against these claimants, and ordered a reference to ascertain and compute the amount of damages to which said libellant might be entitled under said decree; and the libel against the steam-tug Unit, &c., was dismissed, with costs.

That under this decree a reference was had to John A. Osborn, esq., United States commissioner for the southern district of New York, who reported that said libellant was entitled to $3,704.79, with $8.52 interest, and costs taxed at $142.64, which report, on the first day of April, 1872, was confirmed by the said court by the final decree thereof.

And these appellants are advised and insist that the said de-
190 cree is erroneous, inasmuch as said libellant was not entitled to said damages, or any damages, but said claimants were entitled to have said libel dismissed, with their costs in that behalf.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of said Charles Robinson to the next circuit court to be held in the said district, and on the said appeal they intend to make new allegations in the circuit court, and introduce the same, and new and further proofs, and they pray that the said decree, and every part thereof, may be reversed, with costs, or such other decree thereupon be made as to the said circuit court shall seem just, and that the said appellee be condemned to pay to these appellants their costs and damages in the premises.

And these appellants pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, or such other decree thereupon be made as to the said circuit court shall seem just, and that the appellee may be condemned to pay to these appellants their costs and damages in the premises.

RICHARD H. HUNTLEY,
Proctors for Claimant and Appellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George Hussey, being duly sworn, says that he is a clerk in the office of R. H. Huntley, esq., the proctor for the claimants in this action; that on the 16th day of April, 1872, he served a copy of the within petition of appeal upon the proctors for the libellants, at their office, No. 66 Wall street, in the city of New York, by delivering to the person in charge of said office the said copy and leaving the same with him.

GEORGE HUSSEY.

Sworn to before me this 16th day of April, 1872.

ROBERT GILLEN,
Notary Public.

We consent that the clerk attach his certific't' to the annexed apostles, as a correct copy of the apostles in the above-entitled cause.

New York, Nov. 14, 1872.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Rideout.

SCUDDER & CARTER,
Proctors for Robinson.

We consent that the clerk attach his certificate to the annexed printed apostles, the said printed matter being correct.

October, 1872.

BEEBE, DONOHUE & COOKE,
For the Unit.

191 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Friday, the third day of January, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Lewis B. Woodruff, circuit judge.

H. S. RIDEOUT ET AL., LIBELLANTS,
v.
THE STEAMER CITY OF HARTFORD AND the Steam-tug Unit, &c.

CHARLES ROBINSON
v.
THE STEAMER CITY OF HARTFORD, &c.

Argued together.

The above-entitled causes coming on for hearing on appeal,

M'r Joseph H. Choate is heard in behalf of the libellants and appellants.

M'r R. H. Huntley is heard in behalf of the City of Hartford.

M'r Charles Donohue is heard in behalf of the Unit.

M'r Choate closes.

Cur. adv. vult.

192 Circuit court of the United States for the southern district of New York. In admiralty.

HUDSON S. RIDEOUT ET AL.	Jos. H. Choate,	of co'l.
v.		
THE STEAMBOAT CITY OF HARTFORD, her tackle, &c., and the Steam-tug Unit, her tackle, &c.	R. H. Huntley,	"
	Jas. C. Carter,	"
CHARLES ROBINSON	Jos. H. Choate,	"
vs.		
THE SAME.	Cha's Donohue,	"

WOODRUFF, Circ't J.:

I concur fully with the conclusion of the judge of the district court, (4 Benedict, 568,) that the City of Hartford was in fault, and that her fault contributed to the collision which caused the loss sustained by the respective libellants.

But I am unable to find that the Unit was without fault therein. Her navigators saw the City of Hartford coming down the river, at such a distance that there was time for whatever maneuvre by either or both vessels was necessary to avoid collision. The direction of the two courses was such that one of two situations was involved,

193 that is to say, first, they were approaching so nearly end on as to involve danger of collision; or, second, they were crossing each other's course so as to involve risk of collision.

Doubtless the latter best describes their situation, but either situation leads to the same conclusion.

1st. If regarded as approaching nearly end on, then it was the duty of each to port the helm and go to the right, & so pass port to port. This the City of Hartford attempted to do, (being, in fact, already on a sheer to starboard.) The Unit, in plain violation of the rule, attempted the opposite maneuvre, and starboarded, with intent to go to the left, and pass starboard to starboard. This was wrong. She had no right to make such an attempt, without, at the same time, assuming the risk of its successful accomplishment unless defeated in her endeavor by an unwarranted counter movement by the other vessel.

2nd. If the vessels be regarded as crossing so as to involve risk of collision, then it was the clear duty of the Unit, having the City of

194 Hartford on her starboard side, to keep out of the way of the City of Hartford, and the like clear duty of the latter to keep her course unless the conduct of the Unit created a duty to depart from such course or to stop. The City of Hartford was keeping her course, and, in fact, attempted to indicate to the Unit her purpose to do so and even give the Unit a wider berth, by increasing her own swing to westward, when she was admonished that the Unit proposed to go to the left instead of the right & to cross her bows.

The primary fault was on the part of the Unit in making this attempt. Upon the evidence, I cannot doubt that if the City of Hartford had continued on her port helm, as she was when she came in sight, and the Unit had even done nothing, no collision would have happened. Indeed, the witnesses whom the Unit herself called to charge fault on the City of Hartford make her fault not that she ought to have starboarded, but that she did so when they say she should have ported and swung towards New York, which, in fact, she was doing when arrested by the manuvres of the Unit. This fault of the Unit is the more striking when

it is considered that the pilot of the Unit knew and recognized the City of Hartford, which was a regular passage and freight boat between Hartford, Conn't, and the city of New York, knew where was her regular landing-place, near Peck slip, on the New York side, and therefore that her regular course would take her to the westward across the river. To attempt then to take the Unit to the westward, across her bows, was not only a violation of the first rule above referred to, calling upon the Unit to keep to the right, but it was choosing the course which (under the rule requiring the Unit to keep out of the way) was least likely to avoid the other vessel, and most likely to embarress her in proceeding to her destination.

Thus far I have said nothing of the signals given by either. On that subject I observe that the City of Hartford rightly, and in all resp'ts properly, intended to go to starboard, (to the port of the Unit,) and was doing so, and blew one whistle, the proper signal to indicate to the Unit her intention. Let it be conceded that her signal was not heard, that did not justify an attempt by the Unit to cross her bows if that was not a safe attempt.

That it was not a safe endeavor is conclusively proved by the fact that although, in compliance with the request of the Unit, the City of Hartford co-operated with her to enable her to do so, a collision was the result. And, as I think, this also shows what I have before stated, that, had not the City of Hartford been diverted from her course by this attempt of the Unit, no collision would have occurred. But it is said that when the Unit blew two whistles to indicate her design to go to the westward, the City of Hartford assented to her proposition as a safe & proper one. I concur with the court below, that the City of Hartford ought not to have assented. She ought either to have kept off towards New York or to have stopped.

But I cannot concede that this excuses the Unit for making the useless endeavor. It comes with ill grace from her to say that the fault is solely due to the City of Hartford for causing a collision, by doing what she (the Unit) expressly requested her to do.

The maneuvre was fatal. It was an unskilful and improper one, under the circumstances. In the most favorable view for the Unit, it was an error in which both concurred. Observations pertinent to the case of an erroneous maneuvre proposed by one vessel & assented to by the other, resulting in collision, & held to involve mutual or concurring fault, were made in The Albemarle, (8 Blatch., 200, 203.) I feel great doubt whether those who navigated the Unit acted upon the signal which was given by herself, and whether, in part, there was not great incompetency, and even mistake, in giving the signal at all.

Certainly, the City of Hartford, by assenting to the maneuvre proposed by the Unit, no more guaranteed its safety and propriety than the Unit did in making the proposition. The City of Hartford had, surely, as clear a right to accept the two whistles as an assurance by the Unit that, with her co-operation, the Unit could and would pass to the west, as the Unit had to infer from the response that the City of Hartford could & would pass to the east.

The conclusion seems to me inevitable that both were in fault. The City of Hartford ought not to have come down at such speed; she ought not to have accepted the proposal of the Unit, and she ought either to have stopped or to have kept off to the westward. The Unit ought not to have made the attempt to go to the west, and she, too, in view of her mistaken signal, ought (after the signal was given) to have kept off, or stopped entirely much sooner than she did. It is doubtful whether,

after she had called the City of Hartford from her course, she did not herself see her error & neglect to go to the westward at all, as her signal promised. But if she found she could not in that way escape the consequences of her own mistake, she should have instantly given signals of alarm & stopped. Although those signals might have been ineffectual, they might have disclosed the error to the City of Hartford & induced her sooner to stop & back, increasing the chances of safety.

The decree should, therefore, direct contribution; and as the
199 counsel expressed a desire to be heard on the question whether, as the value of the Unit is less than one-half the damages, the libellants should have recourse to the City of Hartford for the deficiency, I will *leave* them on that subject, on the settlement of the decree.

I ought to add that I find no sufficient reason for disturbing the report of the commissioner upon the amount of the damages.

(Endorsed:) Circuit court of the United States for the southern district of New York. Hudson S. Rideout et al. vs. The City of Hartford & The Unit. Charles Robinson vs. the same. Woodruff, circ't j. Filed Ap'l 7, 1873.

200 Circuit court of the United States for the southern district of New York. In admiralty.

RIDEOUT
v.
THE CITY OF HARTFORD AND THE UNIT.

ROBINSON
v.
THE SAME.

WOODRUFF, Circuit J.:

These cases having been heard upon the merits, and an opinion filed directing contribution by the steamboat City of Hartford and the steamtug Unit, they are again heard, agreeably to the suggestion in that opinion, for the purpose of determining whether, in case the libellants shall be unable to collect so much as one-half of their loss from the steamtug, (which appears to have been discharged from custody upon filing a stipulation for her value, which is less than one-half of such loss,) the steamboat City of Hartford shall be held liable for the deficiency.

201 It is suggested in behalf of the City of Hartford, that the Unit was discharged upon an appraisal to which the owners of the City of Hartford were not parties, and of which they had no notion; that, if the effect of a valuation of the Unit, at less than one-half of the loss claimed by the libellants, is permitted to prejudice the City of Hartford, a most unfair and dangerous precedent will be established; that in cases of collision in which a third party claims to recover for an injury, there will be opportunity for collusion, and a temptation thereto; and that owners of cargo on board of one vessel and owners of the tow, where, as in this case, one of the colliding vessels is a tug having vessels or barges in tow, are almost universally in sympathy with the tug or the vessel having their cargo, and they and their witnesses are usually found struggling to cast the whole responsibility upon the other colliding vessel, and may be expected to collude with the former against the latter.

Observation & experience, no doubt, give some foundation for
202 this apprehension; and, were there any evidence in this case that the tug Unit was of greater value than that for which the stipulation was given, it would be entitled to grave consideration.

The rule in admiralty being well settled that where both of the colliding vessels are in fault, each shall contribute one-half to make up the loss, it is clear that neither should, by appraisal & bond for value to which the other is not a party, be permitted to avoid payment of, or condemnation for, her full share.

My conclusion, however, upon the principal question does not require that I should dwell further upon this point. It is also suggested that, the property of the libellants in this case having been voluntarily placed in charge of the tug for transportation, the libellants in a legal sense take the risk of the care and good management of the tug; that, in the admiralty, the fault of the tug placed the owners of such cargo & of such tow in the same relation to the City of Hartford as the tug was herself; that the rule in the admiralty requiring contribution in cases of mutual fault, is not and ought not to be affected by any
203 enquiry into the ownership or title to the property on board of either vessel; that this view of the subject works no hardship, because the owners of cargo on a vessel towed, and the owners of such vessel, may protect themselves by proper contracts, so that, if their property is lost by negligence on the part of the tug, they will have full indemnity, even though they may not obtain it through the contribution ordered; that such right to full indemnity was clear without any special contract before the passage of the act of Congress of March 3rd, 1851, (9 U. S. Stat. at Large, 635,) for the relief of ship-owners; that that act was intended to leave them to bear the loss over & above the value of the vessel employed by them, and was not intended to cast a further or additional burthen upon the City of Hartford in a case like the present, or to make it necessary that she pay any greater sum as contribution to the loss than if that act had not passed; that this is illustrated by supposing the libels had been filed against the owners of the Unit in personam, and against the City of Hartford in rem;
204 that the fault of both being proved, and contribution being ordered, it was not the intention of the act of Congress to relieve the owners of the Unit in part, and thereby to cast the greater burthen on the owners of the City of Hartford, who, by the rules of the admiralty, ought to be compelled to pay one-half only; and that there is no hardship to the libellants, because they have their remedy against the master of the Unit for his negligence in this case, for any deficiency which contribution shall leave unsatisfied, as his liability is not relieved by the act of Congress.

The question whether in case of collision between two vessels, caused by the faulty navigation or negligence of each, the rule that each shall bear one-half of the loss is an absolute measure and limit of the liability of each does not appear to have been raised or decided in the Supreme Court of the United States, and I am advised of but one opinion upon the question in any court of admiralty in the United States. In the case of The Atlas, in the district court for the eastern district
205 of New York, (4 Benedict, 27,) the question is discussed, and the liability of the respective vessels was held to be, in admiralty, definitely limited to one-half the loss.

In the affirmance of the decision in that case, (10 Blatch., C. C. R., 459,) it was only necessary to say that a libellant could not by proceeding against one of the offending vessels alone deprive her owners of the right to such contribution from the other vessel & of the means of enforcing it. The case of The Gregory and The Washington, in the Supreme Court, (9 Wall., 513,) went no further than to hold it a decree of which a libellant could not complain when he was required to exhaust

his remedy by process of execution against each for one-half before collecting more than one-half from either. There was in that decree an implied affirmance that either would be liable for a deficiency if one-half should not be collected from the other. But as in that case both were abundantly adequate, & more than adequate, to the payment of the half charged on each, respectively, the point made in the
206 present case was wholly immaterial, and does not appear to have been at all considered.

In this state of the adjudications here I am disposed to follow the English court of admiralty as authority on the question. It is important that such a question should be settled, and I am much impressed by the reasonableness of the rule, as stated and commented upon by D'r Lushington, in The Milan, (1 Lush., Ad. Rep., 388,) which largely influenced the opinion of the district judge in the case of The Atlas, before referred to.

If the rule in this country is to be settled contrary to the rule in England, it is fitting that it should be so declared by the court of last resort. It is not manifest that the owners of cargo, or of a tow, employing a vessel for carriage or towage, which is found guilty of fault, producing a collision, ought, in equity, to stand in any better position as against a colliding vessel than the owners of the vessel conveying their cargo or towing their property. To require them to look solely to the vessel which they employ for their more complete indemnity is recognizing their right to a full recovery, but entitling them to
207 recover from each what each ought to contribute, while, as said by D'r Lushington, it is not clear that justice requires that they be permitted to recover from one the whole amount of the damages occasioned by the act of both.

Let the decree be settled in conformity with these views.

Joseph H. Choate and James C. Carter for the libellants.
Richard Huntley for The City of Hartford.
Charles Donohue for The Unit.

(Endorsed:) Circuit court of the United States for the southern district of New York. Hudson S. Rideout vs. The Steamboat City of Hartford and The Steam-tug Unit. Charles Robinson vs. The Same. Woodruff, circ't j. Filed Aug. 20, 1873.

208 Circuit court of the United States, southern dist. of New York.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, The Hartford and New York Steamboat Company, claimants.

Please take notice that the within is the proposed decree in this cause which will be presented to the Hon. Lewis B. Woodruff at the circuit-court rooms, No. 41 Chambers street, in the city of New York, on the 29th day of September, 1874, at the opening of court on that day.

Dated Sept. 26, 1874.

Yours, &c.,

SCUDDER & CARTER,
Proc's for Lib'lts.

To R. H. HUNTLEY, Esq.,
Proc. for Cl'm'ts.

209 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on the 4th day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Lewis B. Woodruff, circuit judge.

CHARLES ROBINSON
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, The Hartford and New York Steamboat Company, claimants.

The above cause having been heard on the appeal of the Hartford and New York Steamboat Company from the decree of the district court therein, after hearing Richard H. Huntley, of counsel for the said The Hartford and New York Steamboat Company, and James C. Carter, of counsel for the libellant, and due deliberation had thereon, it is ordered, adjudged, and decreed that so much of the decree of the said district court bearing date the 1st day of April, 1872, as orders, adjudges, and decrees that the libellant recover for the cargo of corn on
210 board the schooner Abbie S. Oakes the sum of $3,713\frac{13}{100}$, together with his costs, taxed at $142\frac{64}{100}$, against the steamboat City of Hartford, her tackle, &c., is hereby modified.

And it is hereby adjudged and decreed that the libellant recover against the said Steamboat City of Hartford, her tackle, apparel, and furniture, the sum of ($1,856\frac{66}{100}$) one thousand eight hundred and fifty-six dollars and sixty-six cents, being one-half part of the damages sustained by the libellant by reason of the collision in the pleadings mentioned, including interest thereon to the date of said decree of said district court, and the sum of three hundred and thirty-seven $\frac{14}{100}$ dollars for the interest on said half part to the date of this decree; and do also recover of said Steamboat City of Hartford so much of the costs of said libellants against said steamboat in the district court, amounting to one hundred and forty-two dollars and sixty-four cents, ($142.64,) as were incurred in the seizure of the City of Hartford, and amounting to the sum of one hundred and two $\frac{90}{100}$ dollars, ($102.90,) interest thereon to the date of this decree, eighteen $\frac{60}{100}$ dollars, ($18.60,) together
211 with one-half of the general costs of the circuit court taxed at the sum of fourteen dollars and thirty-five cents, amounting, in all, to the sum of twenty-three hundred and twenty-nine dollars & sixty-five cents, and that the said steamboat, her tackle, apparel, and furniture be condemned therefor.

And it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against the Hartford and New York Steamboat Company, and John H. Frothingham and Charles S. Baylis, the sureties on their bond given on the appeal of the said steamboat company, for the sum of eight thousand dollars, ($8,000,) the amount of their said bond.

L. B. WOODRUFF.

212 CITY AND COUNTY OF NEW YORK, *ss:*

George I. Baldwin, being duly sworn, says that on the 26th day of September, 1874, he served a copy of the within proposed decree upon Richard H. Huntley, proctor for the claimants herein, by deliver

ing and leaving the same with the person in charge of said Huntley's office, he being absent therefrom.

GEO. I. BALDWIN.

Sworn to this 29th day of September, 1874, before me.

GEO. A. BLACK,
Notary Public, N. Y. Co.

213 (Endorsed:) U. S. circuit court, southern district of N. Y. Charles Robinson vs. The Steamboat City of Hartford, &c. Decree. Scudder & Carter, pro's for lib'l'ts. Due & timely service of a copy of the within proposed decree hereby admitted this 26th day of Sept., 1874. Filed Nov. 5, 1874.

214 At a stated term of the circuit court of the United States for the southern district of New York, held at the court-rooms of said court, in the city of New York, on the 5th day of November, in the year one thousand eight hundred and seventy-four.

Present, Hon. Lewis B. Woodruff, circuit judge.

HUDSON S. RIDEOUT, JOAB W. PALMER, GEORGE Bowen and Aaron Babb, Lysander Strickland, William H. Strickland and Philo A. Strickland, composing the firm of William H. Strickland and Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Atwood, libellants,

against

THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, The Hartford and New York Steamboat Company, claimants, and The Steam-tug Unit, her tackle, apparel, and furniture, Philip H. Rockefeller and Mary Thomas, claimants.

215 The above-entitled cause having come on to be heard on the appeal of the Hartford and New York Steamboat Company from the decree of the district court therein, and upon the appeal of the libellants from the portion of the said decree dismissing the libel therein as against the said steam-tug Unit, with costs, as by their respective appeals more fully appears;

After hearing Richard H. Huntley, of counsel for the said The Hartford and New York Steamboat Company, claimants and appellants, and Joseph H. Choate, of counsel for the said libellants, and Welcome R. Beebe, of counsel for Philip H. Rockefeller and Mary Thomas, claimants of said steam-tug Unit, and due deliberation being had thereon:

It is ordered, adjudged, and decreed that so much of the decree of the said district court as orders, adjudges, and decrees that all of the exceptions to the report of the commissioner therein referred to be disallowed, and the said report of said commissioner be in all things con-

216 firmed, be, and the same is hereby, affirmed.

And it is further ordered, adjudged, and decreed that so much of the decree of the said district court herein as adjudges and decrees that the libel herein as against the steam-tug Unit, her tackle, apparel, and furniture, be dismissed, with two hundred and twenty-four dollars and thirty-two cents, the taxed costs of the claimants of the said tug, and that out of the proceeds of the stipulation of the libellants for costs,

when paid into the registry of this court, the clerk pay to the claimants of the said tug, or to their proctors, the sum last aforesaid, with interest thereon from the date of the taxation of said claimants' costs to the time of such payment, and that unless an appeal be taken from the said decree within the time limited and prescribed by the rules and practice of the said court, the stipulators in behalf of the said libellants forthwith pay into the registry of this court the amount of their said stipulation, and that the clerk distribute the proceeds thereof in satisfaction of the said decree as to said steam-tug Unit, and each and
217 every part of such portion of said decree be, and the same is hereby, wholly reversed and set aside.

And it is further ordered, adjudged, and decreed that the remainder of the said decree of the said district court be, and the same is hereby, modified as hereinafter appears; and in lieu and stead of the recovery against the steamboat City of Hartford, her tackle, apparel, and furniture, by said decree of the district court adjudged and decreed.

It is hereby ordered, adjudged, and decreed that the libellants do recover against the said steamboat City of Hartford, her tackle, apparel, and furniture, the sum of two thousand and eighty-seven dollars and sixty-seven cents, ($2,087.67,) being one-half part of the damages sustained by the libellants by reason of the collision in the pleadings mentioned, including interest thereon to the date of the said decree in the district court, and do also recover against the said steamboat City of Hartford, her tackle, apparel, and furniture, the costs of said
218 libellants against the said steamboat in the district and circuit courts, being such costs as were incurred in the seizure of the City of Hartford, and one-half of the general costs in this cause, including interest on the said two thousand and eighty-seven dollars and sixty-seven cents from the date of said decree in the district court to the date of this decree, which have been taxed and adjusted at the further sum of five hundred and eighty-four dollars and eighty-seven cents, amounting, altogether, to the sum of twenty-six hundred and seventy-two dollars and fifty-four cents, and that said steamboat City of Hartford, her tackle, apparel, and furniture, be condemned therefor.

And it is further ordered that in pursuance of the act of Congress passed March 3rd, 1847, a summary judgment be, and the same is hereby, entered against the Hartford and New York Steamboat Company, the principal, and John W. Frothingham and Charles S. Baylis, the sureties on their bond given on the discharge of the property arrested for the sum of sixteen thousand dollars, the amount of their said bond,
219 executed in discharge of the said steamboat from custody, and that judgment be, and the same is hereby, entered in favor of the said libellants against the said The Hartford and New York Steamboat Company and John W. Frothingham, upon their bond on appeal, and against the said The Hartford and New York Steamboat Company, John W. Frothingham, and Charles S. Baylis, upon their stipulation for costs heretofore given in this cause, to the amount of the damages and costs aforesaid.

And it is further ordered that unless an appeal be taken from the foregoing portion of this judgment and decree against the said steamboat and against the claimants thereto and their sureties and stipulators within the time limited by law for a stay of execution, that the said libellants have execution to enforce satisfaction thereof.

And it is further ordered, adjudged, and decreed that the libellants do recover against the steam-tug Unit, her tackle, apparel, and furniture, the sum of two thousand and eighty-seven dollars and sixty-seven

cents, ($2,087.67,) being the other one-half of the damages sus-
220 tained by the libellants by reason of the collision in the pleadings mentioned, including interest thereon to the date of the decree in the district court, and do also recover against the said steam-tug Unit, her tackle, apparel, and furniture, the costs of said libellants against the said steam-tug in the district and circuit courts, being such costs as were specially incurred by the proceedings against the Unit, and one-half of the general costs in the cause, and including interest on the said two thousand and eighty-seven dollars and sixty-seven cents, from the date of said decree in the district court to the date of this decree, which have been taxed and adjusted at the further sum of six hundred and ninety-nine $\frac{87}{100}$ dollars, amounting, altogether, to the sum of twenty-seven hundred and eighty-seven dollars and fifty-four cents, and that said steam-tug Unit, her tackle, apparel, and furniture, be condemned therefor.

And it is further ordered that judgment be, and the same is hereby, entered against Philip H. Rockefeller and Mary Thomas, George
221 Townsend and John Petrie, in favor of the said libellants, on their stipulations for value and costs herein, in the sum of twenty-seven hundred and eighty-seven dollars and fifty-four cents, and that unless an appeal be taken from the foregoing portion of this judgment and decree against the said steam-tug and the claimants thereto, and their stipulators, within the time limited for a stay of execution, *that* the said libellants have execution to enforce satisfaction thereof.

(Signed) L. B. WOODRUFF,
Circuit Judge.

222 (Endorsed:) United States circuit court, southern district of New York. Hudson S. Rideout et al. vs. Steamboat City of Hartford, &c., and Steam-tug Unit, &c. Decree. Evarts, Southmayd & Choate, proctors for libellants. Filed Nov. 11, 1874.

Due and timely service of a copy of within proposed decree, and of a notice of the settlement of the same, of which annexed is a copy, is hereby admitted.

New York, April 28, 1874.

R. H. HUNTLEY,
Proctor for Cl'ts, City Hartford.
BEEBE, DONOHUE & COOKE,
Proctors for Unit.

223 Take notice that a proposed decree in the above-entitled cause, of which within is a copy, will be presented for settlement to M'r Justice Woodruff, at his chambers, at 39 and 41 Chambers street, New York City, on the second day of May next, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard.

New York, April 28, 1874.

Yours, &c.,
EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants.

Settlement of within decree adj'd to May 6th, 1874, at 10½ a. m.
BEEBE, DONOHUE & COOKE,
Cl'm'ts' Pr's.
R. H. HUNTLEY, *Cl'm'ts' Proctor.*

Settlement of within decree adjourned by consent to May 12, 1874, at 10¾ o'clock, at chambers of Judge Woodruff.

R. H. HUNTLEY, *Claimants' Proctor.*
BEEBE, DONOHUE & COOKE,
Cl'm'ts' Proctors.

Settlement of within decree is hereby adjourned to May 14, 1874, at 10¾ a. m., at chambers of Woodruff, J.

BEEBE, DONOHUE & COOKE,
Proctors for Unit.
R. H. HUNTLEY, *Cl'm'ts' Proctor.*

224 Supreme Court of the United States.

CHARLES ROBINSON, LIBELLANT AND APPELLANT,
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., The Hartford and New York Steamboat Company, claimants and appellees.

To the honorable the Supreme Court of the United States:

The appeal of Charles Robinson, the above-named libellant and appellant, respec'fully showeth, that on or about the eighth day of April, 1869, the above-named libellant and appellant exhibited his libel against the steamboat City of Hartford, her tackle, &c., and against the steamtug Unit, her tackle, &c., in the district court of the United States for the southern district of New York, in a cause civil and maritime, for the recovery of damages to the sum of four thousand five hundred ($4,500) dollars, alleged to have been sustained by him to the cargo laden on board of the schooner Abbie S. Oakes, by collision with
225 the said steamer City of Hartford, on the East River, in the State of New York, while the said schooner was in the prosecution of a voyage from Baltimore, in the State of Maryland, to Portsmouth, in the State of New Hampshire, on the 27th day of March, 1869.

That on or about the 30th day of April, 1869, the Hartford and New York Steamboat Company, claimants of the above-named steamboat City of Hartford, filed their exceptions to said libel in said court. That on or about the 13th day of May, 1869, the above-named libellant and appellant exhibited his amended libel in said court, claiming over fifty dollars, and praying, among other things, that the said steamboat City of Hartford might be condemned and sold to pay the said libellant's claim in said libel mentioned, and costs.

That under process issued out of said court the said vessel was attached by the marshal, and that the above-mentioned company appeared for her, and on the 17th day of December, 1870, filed in said court a stipulation of the libellant's proctors, to wit, that the answer in a
226 certain cause in said court, brought by Hudson S. Rideout and others against said vessel for alleged damages arising from the same collision, for damages arising from which this cause also was brought, should be considered and treated as the answer of the claimants in this cause also, which answer prayed that the libel be dismissed with their costs in that behalf, as by reference to said libel, stipulation, and answer will more fully appear.

That the said cause came on to be heard, together with the above

cause of Rideout et al., &c., before the honorable Samuel Blatchford, judge of the said district court, on or about 14th, 17th, 18th, 19th, and 20th of October, 1870. Upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, did, on the 16th day of December, 1870, make his decree in said cause in favor of the libellant against the claimants, and ordered a reference to ascertain and compute the amount of damages to which said libellant might be entitled under said decree, and the libel against the said steam-tug Unit, &c., was dismissed with costs.

227 That thereafter, and on the first day of April, 1872, a final decree was made and pronounced therein by the said district court, wherein it was adjudged and decreed that the said libellant recover against the said steamboat City of Hartford, her tackle, &c., the sum of $3,855.95, being the amount of libellant's claim and costs.

And that after such final decree the said claimants duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, and on the 4th day of November, 1874, the said circuit court made a final decree in the said cause, whereby it decreed that so much of the decree of the said district court bearing date the 1st of April, 1872, as orders, adjudges, and decrees that *that* the libellant recover for the cargo of corn on board the schooner Abbie S. Oakes the sum of $3,855$\frac{95}{100}$ be modified. And said decree further adjudged and decreed that the libellants recover against the said steamboat City of Hartford, her tackel, furniture, and ap-

228 parel, the sum of $1,856$\frac{66}{100}$, being one-half part of the damage sustained by the libellant by the collision in the pleadings mentioned, including interest thereon to the date of said decree of said district court, and the sum of $337.14 for the interest on said half part to the date of the said final decree of the said circuit court.

And said decree further ordered that the said appellant recover of said steamboat City of Hartford, her tackle, &c., so much of the costs of said libellant against said steamboat, her tackle, &c., in the said district court, amounting to $142.64, as were incurred by reason of the seizure of the said steamer City of Hartford, her tackle, &c., and amounting to the sum of $102.90, and interest thereon to the date of the decree of the said circuit court, amounting to $18.60, together with one-half of the general costs of the said circuit court, taxed at the sum of $14.35, and amounting, in all, to the sum of $2,329.65. And that the said steamboat City of Hartford, her tackle, apparel, and furniture, be condemned therefore, and that the said libellant and appellant have execution, and that the stipulators cause their stipulations to be fulfilled.

229 Which said decree of the said circuit court is, as the appellant is advised, erroneous, in that the said steamer City of Hartford, by reason of the collision alleged in the libel, was chargeable to the libellant with the whole amount of the damage occasioned thereby.

Whereby this libellant appeals from the said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that so much of said decree of the circuit court as directs that this libellant and appellant recover but one-half of the damages chargeable

against the said steamboat City of Hartford may be reversed, and a decree made that the appellant recover against the said steamboat City of Hartford, her tackle, apparel, and furniture, the amount of damages sustained by him as decreed by the said district court, with costs,
230 or such other decree as to the said Supreme Court shall seem just.

SCUDDER & CARTER,
Proctors for Appellant.

(Endorsed:) Supreme Court of the United States. Charles Robinson, libellant & appellant, vs. The Steamboat City of Hartford, her tackle, &c., et al., claimants & appellees. Petition of appeal. Scudder & Carter, proc. for app'l'ts. Due service of a copy of the within petition is hereby admitted this 24th day of November, 1874. R. H. Huntley, proctor for cl'm'ts. Filed Nov. 27, 1874.

231 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

CHARLES ROBINSON, LIBELLANT AND APPEL'T,
vs.
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, the Hartford & New York Steamboat Co., claimants and appellees.

Know all men by these presents that we, Henry J. Scudder, of number 116 East 17th street, in the city of New York, and James C. Carter, of No. 117 East 17th street, in said city, are held and firmly bound unto the above-named Hartford and New York Steamboat Co. in the sum of two hundred and fifty ($250) dollars, to be paid to the said *to be paid to the said* appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 19th day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, for the purpose of reversing the decree rendered in the above-entitled suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES C. CARTER. [L. S.]
HENRY J. SCUDDER. [L. S.]

Sealed and delivered and taken and acknowledged this 19th day of November, 1874, before me.

GEO. A. BLACK,
Notary Public, N. Y. Co.

232 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry J. Scudder and James C. Carter, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES C. CARTER.
HENRY J. SCUDDER.

Sworn to this 19th day of November, A. D. 1874, before me.
GEO. A. BLACK,
Notary Public, N. Y. Co.

(Indorsed:) Vol. , page . U. S. circuit court. Charles Robinson, app'l't. vs. The steamboat City of Hartford, The Hartford & N. Y. Steamboat Co., cl'm'ts, appellee. Bond. Approved as to form & sufficiency of sureties as a bond for costs. S. B. Woodruff. Nov. 23, 1874. Filed this 27th day of Nov. 1874.

233 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the Hartford and New York Steamboat Company:

Whereas Charles Robinson has lately appealed to the Supreme Court of the United States from so much of a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in his favor in a cause of collision, civil and maritime, in which he is libellant & appellee, as directs that said libellant recover of said steamboat one-half only of the amount of damages decreed to said libellant and appellee by the decree of the district court, and has filed the security required by law: You are, therefore, hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the 2nd Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern
234 district of New York, in the second circuit, the 23rd day of November, in the year of our Lord 1874, and of the Independence of the United States the ninety-ninth.

L. B. WOODRUFF,
Circuit Judge.

SCUDDER & CARTER,
Proc. Lib'l'ts & App'l'ts.

(Endorsed:) U. S. Supreme Court. Charles Robinson, lib'l't & app'l't, vs. The steamboat City of Hartford, The Hartford & N. Y. Steamboat Co., cl'm'ts & appellee. Citation. Filed Nov. 27, 1874. Scudder & Carter, proc. lib't. Due and timely service of a copy of the within citation is hereby admitted, this 24th day of November, 1874. R. H. Huntly, proctor for cl'm't.

235 Circuit court of the United States for the southern district of New York.

HUDSON S. RIDEOUT, JOAB W. PALMER, George Bowen, and Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland & Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Attwood
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, The Hartford and New York Steambot Company, claimant and appellant.

Please take notice that the above-named claimant and appellant, conceiving itself aggrieved by the final decree entered on the 5th day of November, 1874, in the above-entitled cause, hereby appeals therefrom to the Supreme Court of the United States, at a term thereof to be held at Washington, on the first Monday in October, 1875.

236 Dated New York, November 14th, 1874.

RICHARD H. HUNTLEY.
Proctor for Cl'm'ts & Appel'ts, 35 Pine St., N. Y.

To EVARTS, SOUTHMAYD & CHOATE,
Proctors for Libellants & Resp'd'ts.
KENNETH G. WHITE, Esqr., *Clerk.*

(Endorsed:) U. S. circuit court, eastern district of N. Y. Hudson S. Rideout et al. against The steamboat City of Hartford, &c. Notice of appeal. Richard H. Huntley, proctor for claim't and appellant, 35 Pine st., N. Y. Due service of a copy of the within notice is hereby admitted. Nov. 14th, 1874. Evarts, Southmayd & Choate, libell'ts' proctors. Filed Nov. 17, 1874.

237 Supreme Court of the United States.

THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., The Hartford and New York Steamboat Company, claimant and appellant,
against
HUDSON S. RIDEOUT, JOAB W. PALMER, George Bowen, Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles Doane, and William Atwood, libellants and appellees.

To the honorable the Supreme Court of the United States:

The appeal of the above-named claimant and appellant respectfully showeth to this court that on or about the second day of April, 1869, the above-named libellants and appellees exhibited their libel against the steamboat City of Hartford, her tackle, &c., and against the
238 steam-tug Unit, her tackle, &c., in the district court of the United

States for the southern district of New York; that on the 28th day of April, 1859, the Hartford and New York Steamboat Company, claimant of the above-named steamboat City of Hartford, &c., filed its exceptions to said libel in said court; that on or about the 5th day of May, 1869, the above-named libellants and appellees exhibited their amended libel in said court, claiming over $50, and praying, among other things, that the said City of Hartford and the said Unit might be condemned and sold to pay the said libellant claim in said libel mentioned, and costs, and that process issued upon such libel was duly served upon this appellant, and that thereupon, and on the 5th day of March, 1870, the above-named claimant filed its answer to said amended libel, and such proceedings were had in said cause that on the 21st day of June, 1872, a final decree was made and pronounced therein by said district court, wherein it was, in substance, adjudged that the said libellants who were the owners of the schooner Abbie S. Oakes re-
239 cover against the above-named claimant the sum of $4,119.04 damages, alleged to have been sustained by them to the said schooner by collision in the East River with the steamboat City of Hartford, together with interest and costs, making together, for principal, interest, and costs, the sum of $4,409.52; and said decree further adjudged and decreed that the libel against said steam-tug Unit be dismissed.

That thereupon this claimant appealed from the decree of said district court to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew upon the same pleadings and proofs; such proceedings were had in the said circuit court that afterwards, to wit, on the 5th day of November, 1874, the said circuit court made a final decree in the said cause, whereby it was decreed, among other things, that so much of said decree of said district court bearing date the 21st day of June, 1872, as orders, adjudges, and decrees that the libellants recover for the damages sustained by the schooner Abbie S. Oakes the
240 sum of $4,409.52 be modified. And said decree further adjudged and decreed that the libellants recover against the said steamboat City of Hartford, her tackle, apparel, and furniture, the sum of $2,087.67, being one-half part of the damages sustained by the libellants by reason of the collision in the pleadings mentioned, including interest thereon to the date of the said decree in the district court, and do also recover against the said steamboat City of Hartford, her tackle, apparel, and furniture, the costs of said libellants against the said steamboat in the district and circuit courts, being such costs as were incurred in the seizure of the City of Hartford, and one-half of the general costs in this cause, and including interest on the said $2,087.67 from the date of said decree in the district court to the date of this decree, which have been taxed and adjusted at the further sum of $584.87, amounting altogether to the sum of $2,672.54, and that the said libellants have execution for said decree; which said decree of said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, &
241 respectfully prays that the said decree of said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the Supreme Court will proceed to hear said cause anew, and that the said decree of said circuit court and every part thereof may be reversed and a decree made dismissing said libel with

costs, or such other decree made as to the Supreme Court shall seem just and equitable.

Dated New York, December 28th, 1874.

THE HARTFORD AND NEW YORK STEAMBOAT COMPANY,
By W'M H. GOODSPEED, *Agent.*

RICHARD H. HUNTLEY,
Proctor for Claimant and Appellant.

(Endorsed:) Supreme Court of the United States. The steamboat City of Hartford, her tackle, etc., The Hartford and New York Steamboat Company, claimants and appellants, against Hudson S. Rideout et al., libellants & appellees. Petition of appeal. Filed Jan'y 2,
242 1875. R. H. Huntley, proctor for appel'ts, 35 Pine st. Service of a copy of the within is hereby admitted. Dated N. Y., Dec. 30th,
1874. Evarts, Southmayd & Choate, lib'll'ts' proctor'.

243 Circuit court of the United States of America, southern district of New York, in the second circuit.

THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., the Hartford and New York Steamboat Company, claimant and appellant,

vs.

HUDSON S. RIDEOUT, JOAB W. PALMER, George Bowen, and Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland and Company, Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Attwood, libellants and appellees.

Know all men by these presents that we, The Hartford and New York Steamboat Company, John W. Frothingham, and Charles S. Baylis, are held and firmly bound unto the above-named Hudson S. Rideout, Joab W. Palmer, George Bowen, and Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland & Co., Benjamin Johnson, & Jos. Oakes,
244 Selah Walton, James M. Neally, Charles M. Doane, and William Attwood, in the sum of five thousand five hundred and seventy-six dollars, to be paid to the said appellees, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then this

245 obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE HARTFORD AND NEW YORK STEAMBOAT COMPANY,
By W'M H. GOODSPEED, *Agent.* [L. S.]
JOHN W. FROTHINGHAM. [L. S.]
CHARLES S. BAYLIS. [L. S.]

Sealed and delivered and taken and acknowledged this 31st day of December, 1874, before me.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John W. Frothingham and Charles S. Baylis, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above his just debts and liabilities.

JOHN W. FROTHINGHAM.
CHARLES S. BAYLIS.

Sworn to before me this 31st day of Decem er, 1874.

JOHN A. SHIELDS,
U. S. Comm'r S. D. of N. Y.

I approve the above bond and the sufficiency of the sureties thereto.

L. B. WOODRUFF, *Cir't J.*

246 (Endorsed:) Circuit court of the United States for the southern district of New York. The Steamboat City of Hartford, her tackle, &c., The Hartford and New York Steamboat Company, claimant and appel't, vs. Hudson S. Rideout et al., libellants and appellants. Bond on appeal. R. H. Huntley, proctor for appellant. Ex. A, No. 2, p. 183. Filed Dec. 31, 1874.

247 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

To Hudson S. Rideout, Joab W. Palmer, George Bowen, and Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland and Co., Benjamin Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Attwood:

Whereas the Hartford and New York Steamboat Company, claimant of the steamboat City of Hartford, her tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Hudson S. Rideout, Joab W. Palmer, George Bowen, and Aaron Babb, Lysander Strickland, William H. Strickland, and Philo A. Strickland, composing the firm of William H. Strickland & Co., Benjamin
248 Johnson, Joseph Oakes, Selah Walton, James M. Neally, Charles M. Doane, and William Attwood, against the said steamboat City of Hartford, her tackle, &c., and has filed the security required by law, you and each of you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

L. B. WOODRUFF,
Circuit J.

RICHARD H. HUNTLEY,
Proctor for Appellant, 35 Pine St., N. Y. Co.

(Endorsed:) U. S. circuit court, southern district of N. Y.
249 The Steamboat City of Hartford, her tackle, &c., the Hartford and New York Steamboat Company, claimant & appellant, vs. Hudson S. Rideout et al., libellant & appellees. Citation. R. H. Huntley, proctor for app'l't, 35 Pine st., N. Y. Co. Filed Jan'y 2, 1875.

Service of a copy of the within citation is hereby admitted for and in behalf of the appellees herein, and each of them, and in lieu of personal service of a copy of the same upon them and each of them.
Dated New York, January 2nd, 1875.

EVARTS, SOUTHMAYD, & CHOATE,
Proctor for Appellees.

250 Circuit court of the United States for the southern district of New York.

CHARLES ROBINSON
against
THE STEAMBOAT CITY OF HARTFORD, HER tackle, apparel, and furniture, the Hartford and New York Steamboat Company, claimant & appellant.

Please take notice that the above-named claimant and appellant, conceiving itself aggrieved by the final decree entered on the 5th day of November, 1874, in the above-entitled cause, hereby appeals therefrom to the Supreme Court of the United States, at a term thereof to be held at Washington, on the first Monday in October, 1875.
Dated New York, November 14th, 1874.

RICHARD H. HUNTLY,
Proctor for Cl'm't & Appel'l't, 35 Pine Street, New York.

To SCUDDER and CARTER, Esq'r's,
Proctors for Libellant & Respondent.
KENNETH G. WHITE, Esq., *Clerk.*

251 (Endorsed:) Circuit court of the U. S., eastern district of N. Y. Charles Robinson against the Steamboat City of Hartford, &c. Notice of appeal. Richard H. Huntley, proctor for cl'm't & appellant, 35 Pine st., N. Y.
Due service of a copy of the within notice is hereby admitted.
N. Y. Nov. 14th, 1874.

SCUDDER & CARTER,
Proc. for Resp'd't.

Filed Nov. 17, 1874.

THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., the Hartford and New York Steamboat Company, claimants and appellants,

vs.

CHARLES ROBINSON, LIBELLANT AND APPELLEE.

To the honorable the Supreme Court of the United States:

The appeal of the above-named claimants and appellants respectfully showeth to this court that on or about the 8th day of April, 1869, the above-named libellant and appellee exhibited his libel against the steamboat City of Hartford, her tackle, &c., & against the st' tug Unit, her tackle, &c., in the district court of the United States for the southern district of New York; that on the 30th day of April, 1869, the Hartford and New York Steamboat Company, claimants of the above-named steamboat City of Hartford, filed their exceptions to said libel in said court; that on or about the 13th day of May, 1869, the above-named libellant and appellee exhibited his amended libel in said court,
253 claiming over $50, and praying, among other things, that the said City of Hartford might be condemned and sold to pay the said libellant's claim in said libel mentioned, and costs.

That under process issued out of said court the said vessel was attached by the marshal, and that the above-named claimants appeared for her, and on the 17th day of December, 1870, filed in said court a stipulation of the libellant's proctors, to wit, that the answer in a certain cause in said court, brought by Hudson S. Ride ut and others against said vessel for alleged damages arising from the same collision, for damages arising from which this cause also was brought, should be considered and treated as the answer of the claimants in this cause also, which answer prayed that the libel be dismissed, with their costs in that behalf, as by reference to said libel, stipulation, and answer will more fully appear.

That the said cause came on to be heard, together with the above cause of Rideout et al., etc., before the honorable Samuel Blatchford, judge of the said district court, on or about the 14th, 17th, 18th,
254 19th, and 20th days of October, 1870, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, did, on the 16th day of December, 1870, make his decree in said cause in favor of the libellant against these claimants; and the libel against the steam-tug Unit was dismissed with costs. That thereafter, and on the 18th day of April, 1872, a final decree was made and pronounced therein by the said district court, wherein it was adjudged and decreed that the said libellant recover against the said steamboat City of Hartford, her tackle, &c., the sum of $3,855.95, being the amount of libellant's claim, with costs.

That thereafter your petitioners duly appealed from said final decree to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew upon the same pleadings and proofs; and such proceedings were had in the said circuit court that afterward, and on the 4th day of November, 1874, the said circuit court made a
255 final decree in the said cause, whereby it was decreed that so much

of the decree of the said district court as adjudges that the libellants herein recover for the cargo of corn on board the schooner Abbie S. Oakes the sum of $3,713.31, together with the costs, taxed at $142.64, against the steamboat City of Hartford, her tackle, &c., be modified.

And the said decree further adjudged and decreed that the libellant recover against the said City of Hartford, her tackle, &c., the sum of $1,856.66, being one-half part of the damage sustained by the libellant by reason of the said collision, including interest thereon to the date of said decree of said district court, and the sum of $337.14 for the interest on said half part to the date of this decree, and do also recover of said steamboat City of Hartford so much of the costs of said libellants against said steamboat in the district court, amounting to 142.64 dollars, as were incurred by the seizure of the City of Hartford, and amounting to the sum of 102.90 dollars, and interest thereon to the date of the decree of the said district court, amounting to 18.60, together with the costs of the circuit court, taxed at the sum of 14.35 dollars, amount-
256 ing in all to the sum of 2,329.65 dollars; and that the said steamboat City of Hartford, her tackle, apparel and furniture, be condemned therefor; and that a summary judgment be entered against the Hartford and New York Steamboat Company, and John H. Frothingham and Charles S. Baylis, the sureties on their bond, given in the said appeal of the said steamboat company for the sum of $8,000, the amount of their said bond.

Which said decree of said circuit court is, as this appellant is advised, erroneous, and ought to be reversed, and said libel ought to have been dismissed and the prayer thereof denied.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear said
257 cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree made as to the Supreme Court shall seem just and equitable.

Dated New York, December 28th, 1874.

THE HARTFORD AND NEW YORK STEAMBOAT COMPANY,
By W'M H. GOODSPEED, *Agent.*

RICHARD H. HUNTLEY,
Proctor for Appellant.

(Endorsed:) Supreme Court of the United States. The Steamboat City of Hartford, her tackle, etc., the Hartford and New York Steamboat Company, claimants and appellants, vs. Charles Robinson, libellant & appellee. Filed Jan'y 2, 1875. Petition of appeal. Ent. R. H. Huntley, proctor for app'l'ts. Due service of a copy of the within is hereby admitted. Dated N. Y., Dec. 30th, 1874. Scudder & Carter, lib'll'ts' proctors.

258 *Bond for costs.*

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

THE STEAMBOAT CITY OF HARTFORD, HER tackle, &c., the Hartford and New York Steamboat Company, claimant and appellant,
vs.
CHARLES ROBINSON, LIBELLANT AND APPELLEE.

Know all men by these presents that we, the Hartford and New York Steamboat Company, and John Forthingham and Charles S. Bayless, are held and firmly bound unto the above-named Charles Robinson in the sum of four thousand six hundred and sixty dollars *dollars*, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit, by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its to effect, and answer all damages and costs if it fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE HARTFORD AND NEW YORK STEAMBOAT COMPANY,
By W'M H. GOODS , *Agent.* [L. S.]
JOHN W. FROTHINGHAM. [L. S.]
CHARLES S. BAYLIS. [L. S.]

Sealed and delivered and taken and acknowledged this thirty-first day of December, 1874, before me.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

259 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John W. Frothingham and Charles S. Baylis, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JOHN W. FROTHINGHAM.
CHARLES S. BAYLIS.

Sworn to this 31st day of December, A. D. 1874, before me.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

I approve the above bond and the sufficiency of the sureties thereto.

S. B. WOODRUFF,
Cir't Judge.

(Indorsed:) Vol. , page . U. S. circuit court. The Steamboat City of Hartford, her tackle, the Hartford & N. Y. Steamboat Co., claimants & appellants, vs. Charles Robinson, libellant & appellee. Bond on appeal. Ex. A, No. 2, p. 183. R. H. Huntley, proctor for appellant. Filed this 31st day of Dec. 1874.

260 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Charles Robinson:

Whereas The Hartford and New York Steamboat Company, claimant of the steamboat City of Hartford, her tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Charles Robinson, against the said Steamboat City of Hartford, her tackle, &c., and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

261 L. B. WOODRUFF,
Circuit J.

RICHARD H. HUNTLEY,
Proctor for Appellant.

(Endorsed:) U. S. circuit court, southern district of N. Y. The Steamboat City of Hartford, her tackle, &c., The Hartford and New York Steamboat Company, claimants & appellants, vs. Charles Robinson, libellant & appellee. Citation. Filed Jan'y 2nd, 1875. R. H. Huntley, proctor for app'l'ts.

Due service of a copy of the within is hereby admitted.
Dated N. Y., January 2nd, 1874.
Ent.

SCUDDER & CARTER,
Libellant's Proctors.

Due service of a copy of the within citation is hereby admitted for and in behalf of the appellee herein, Charles Robinson, and in lieu of
262 a personal service of a copy of the same upon him.
Dated New York, January 2nd, 1875.

263 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 262, inclusive, contain a true and complete transcript of the record and proceeding had in said court in the case of Hudson S. Rideout et al., libellants & appellees, against The Steamboat City of Hartford, her tackle, &c., The Hartford & New York Steamboat Co., cl'm't & appellant, Charles Robinson, libellant & appellant, vs. The Steamboat City of

Hartford, her tackle, &c., & The Hartford & New York Steamboat Co., claimants & appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 16th day of September, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

[SEAL.] KENNETH G. WHITE,
Clerk.

(Indorsement on cover:) No. 185. The Steamboat City of Hartford, her tackle, &c., The Hartford & New York Steamboat Co., cl'm'ts, appellants, vs. Hudson S. Rideout et al. S. New York C. C. U. S. No. 186. The Steamboat City of Hartford, her tackle, &c., The Hartford and New York Steamboat Co., claim'ts, appellants, vs. Charles Robinson. Filed 11th October, 1875. No. 212. Charles Robinson, appellant, vs. The Hartford & New York Steamship Company, claimants of the steamboat City of Hartford. Filed 11th October, 1875.

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IN THE

Supreme Court

OF THE UNITED STATES.

No. 185.

The Steamboat City of Hartford, her tackle, etc., The Hartford and New York Steamboat Company, Claimants, *Appellants,*

vs.

Hudson S. Rideout, *et al.*

No. 186.

The Steamboat City of Hartford, her tackle, etc., The Hartford and New York Steamboat Company, Claimants, *Appellants,*

vs.

Charles Robinson.

No. 212.

Charles Robinson, *Appellant,*

vs.

The Hartford and New York Steamboat Company, Claimants, of the Steamboat City of Hartford.

Cross Appeals from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE APPELLANTS

Claimants of the City of Hartford.

RICHARD H. HUNTLEY,

Of Counsel for Claimants City of Hartford.

NEW YORK:

J. W. Pratt, Book and Job Printer, 75 Fulton Street.

1878.

Supreme Court of the U. S.

The Steamboat CITY OF HARTFORD, her tackle, etc. The HARTFORD AND NEW YORK STEAMBOAT COMPANY, Claimants,
Appellants.
vs.
HUDSON S. RIDEOUT et al.

The Steamboat CITY OF HARTFORD, her tackle, etc. The HARTFORD AND NEW YORK STEAMBOAT COMPANY, Claimant,
Appellants.
vs.
CHARLES ROBINSON.

CHARLES ROBINSON, Appellant.
vs.
The HARTFORD AND NEW YORK STEAMBOAT COMPANY, Claimants of the Steamboat CITY OF HARTFORD.

POINTS FOR THE APPELLANTS, CLAIMANTS OF THE CITY OF HARTFORD.

This is an appeal by the City of Hartford from the decree rendered by the Circuit Court of the United

States for the Southern District of New York condemning the Steamer City of Hartford for one half of the damage resulting from a collision between that steamer and the Schooner Abbie S. Oakes, which collision occurred in the East River near the Fulton Ferry, between the Cities of New York and Brooklyn.

The District Court condemned the City of Hartford for the entire damage to the schooner and her cargo.

The Circuit Court modified the decree so as to condemn the City of Hartford for only one half of such damage, while the "Unit," which was the tug having the "Abbie S. Oakes" and another schooner in tow, was condemned as being at fault in producing the collision and to pay one half the damages.

The City of Hartford appeals to this Court against both decrees, while of the libellants Robinson, the owner of the cargo of the "Abbie S. Oakes," is the only appellant.

It is submitted on behalf of the City of Hartford, that the facts contained in the record, and which are carefully discussed in the following points, establish the following summary :—

First.—The testimony in this case is clear in establishing such propositions as will free the Court from difficulty in determining the faulty vessel.

It is clearly established that the "City of Hartford," while passing down the East River, at a distance of 400 or 500 feet from the ends of the piers, discovered, when in the neighborhood of Catharine Ferry, on the Brooklyn side, a tug, with two schooners, one on each side, in tow, over a point of land at the Fulton Ferry slip. The Hartford was going at the speed of about eight miles an hour, against a strong flood tide, and had arrived at about the point where it was proper and usual for her to sheer over to her slip in New York, which is at Pier 24, East river, and is just below a line drawn directly across the river from Fulton Ferry slip on the Brooklyn side.

The Hartford and the tow were then some 1,200 to 1,500 feet apart, and there was at that time no danger of a collision in appearance or in fact. The natural course of the Hartford at that place led her to head about at the foot of Wall street, on the New York side. She was then heading across the bow of the tow, about four points towards the New York shore. The tow was also inclining towards the New York shore. The Hartford then blew one whistle, to indicate to the tow that her course was to the right, her wheel, at the same time, being slightly to port, and she was on a sheer to starboard. This she had the right to do, and the tow should have followed the indication. And there is neither excuse nor reason given why she did not. It does not appear that this one whistle was not heard and understood by the tow. It is true, her pilot does not admit that he understood it was from the Hartford, but his understanding on the trial does not furnish any proof of his understanding at the collision. He does not know what whistles he did hear. The testimony as to this one whistle of the Hartford is so clear and definite that it cannot be doubted that it was blown. Reasons are also in favor of it. It clearly appears that the Hartford first discovered the approach of the two towards each other. But on the assumption that the tug blew two whistles before the Hartford blew at all, we are to infer that the tug made the first discovery; for we cannot believe that the Hartford would see the tow approaching and remain silent.

An obligation, then, was on the Hartford to signal to the tow, and she did it by blowing one blast. She is answered by two blasts from the tug. Then, what was she to do? Keep on still porting? But the proof is that if she had done so, this whole tow, coming up before a strong flood tide, would have been into her broadside.

Should she have stopped and backed, or stopped

her engine merely? But the case fails to show that then a collision would have been avoided, and in the absence of such proof the experience and ability of those navigating the Hartford, are entitled to great weight.

Moreover, the signal from the tug was not to stop, but to go to the left. The Hartford acquiesced at once with that signal; sounded back, and immediately put her helm to starboard.

Now, let us see what effect this produced, and determine, if we can, whether the Hartford judged wisely that no collision could now occur. The Hartford is still heading across the bow of the tow. But she changes so that in a short time she is heading for the starboard bow of the Col. Jones, instead of four points across the bow of the Abbie S. Oakes, as she was when first seen by the master of that vessel. But notice her change of course: how rapid and effectual. She appeared first to be seen by Rideout on board the Oakes. Then she headed four points across his bow. (Fol. 73.) He was about 60 feet further out towards the middle of the river than was Strang, who was on board the Jones. Strang says when he came on deck and saw the Hartford, she was heading for the bow of the tug, and soon after for his starboard bow. Now the steamers were from 400 to 600 feet apart, and nobody looked for a collision. But immediately the tug turned her head towards the Brooklyn shore, thus placing herself directly across the path she had marked out for the Hartford, and had directed her to take. And she went 25 yards—seventy-five feet—after so changing. The evidence is that the point of collision was 25 yards nearer the Brooklyn shore than the point at which the whistles were blown. (Fols. 86 and 105.)

All escape for the Hartford is now entirely cut off She was notified not to go to the right, and this though the pilot of the tug knew that she was bound across the river into a berth well known to

him; (see his testimony at folio 107;) and she acceded and went to the left as directed, and now her course in that direction is obstructed by this new change in the tug, and escape was impossible. Nothing could be done now to avoid the collision. She could only try to weaken the blow. She blew three whistles and immediately commenced backing —her own men say at the distance of about her length from the tow; the pilots of the two ferry boats say about 150 feet from the tow, and her own engineer says that her engine had made three or four revolutions back.

The force of the blow is urged as a reason that the Hartford had not been backing so long. But it is to be remembered that the tow was making about six and a half knots, the tide was running four or five, and the backing of the tug was not against the tide, but *across* it; for she at the time headed towards the Brooklyn shore, laying the whole broadsides of her tows and herself exposed to the full sweep of the tide, which swept them up with great force. No one can doubt that if the Hartford had been anchored, the blow would have been as severe perhaps as it really was.

Let us examine the positions of the vessels at the moment of contact. The Hartford's stem collided with the port bow of the Oakes, near her bowsprit, and between that and her cathead. How did the Hartford's stem get there? At 1,200 to 1,500 feet distant she was heading four points off the port bow of the Oakes. At a distance of 400 to 600 feet she heads toward the starboard bow of the Jones, and her course is nearly parallel with the course of that vessel. (See Diagrams Nos. 2 and 5.)

If this position did not disclose to the tug that all was well, what could do it? The Hartford still keeping her helm to starboard would easily go 100 feet or more inside the Jones.

But, unfortunately, it is at this moment that the tug commences backing. In reversing her engine she, as she states, gives one puff of steam which sounds like a whistle, and which the Hartford takes to be one, and which we insist was one, and upon which the tug acts, and immediately throws her head towards the Brooklyn shore, and passes 75 feet across the track of the Hartford. Of course the Hartford now must stop; it would not do for her to calculate so close as that by keeping her helm fixed and her course on, without stopping her speed, she might possibly pass by the bows of the tow; nor could she now, by porting her helm, regain her former position. The collision was then inevitable, and there is no difficulty in discovering through whose fault.

The rapidity with which the tow sheered towards Brooklyn, merits attention. Before the Hartford was seen by the tug the Jones' helm was hard to starboard, and the Oakes' helm was to port, so as to make them hug the tug. Strang, of the Jones, immediately upon coming on deck, and finding his wheel hard to starboard, rolled it over hard to port. This, he tells us, was right away after the tug blew her two whistles. (Fol. 69.)

In this condition, then, we have the case of two schooners lashed to a tug, both much longer than the tug, and both with their wheels to port, sheering their vessels on a sharp turn, aided by the screw of the tug (how her wheel was, her pilot does not tell us), directly across the course of a large steamer, to which they had given notice that they should leave that path open and unobstructed.

It is not forgotten that Strang says that the tug was backing when he ported his helm; but his remark that headway was done at the time he ported, is based upon an enlarged idea of human credulity, for that a tug could so suddenly stop headway with two vessels is not to be believed. And Strang's fur-

ther explanation that he ported his helm to sheer the vessels' heads to port, can only be understood by supposing him at that time so excited that he did not see things very clearly in their true relations. For how much did he suppose porting his helm on a sternway would sheer his vessel to port when she was already swinging to starboard with great rapidity.

Now this is the whole story, and it is clear from it that if the tug had been without her tows, and had damaged the Hartford by a collision, she would have been condemned as wholly in fault.

Second.—But it is urged that the Hartford upon receiving the two whistles from the tug, should have either kept on under a ported wheel, or stopped altogether. This assumes that one or the other of those manœuvres would have avoided the collision, which is not proved, but the contrary. It further assumes that the Hartford had the right to disregard the signals of the tug, which is not law, and the acting upon which principle would have made her liable for all the consequences which might have occurred.

Third.—It is charged that the Hartford was not in the middle of the river, and that her answer admits she ought to have been there.

Explanations as to certain words in the answer could easily be given, but as they are not in evidence, such explanations are withheld. But let us see.

It does appear that about off the hook, the Hartford passed a tow on the starboard hand, and that she passed along nearer the Brooklyn shore than the New York shore, and it appears in evidence that this was the usual and proper course for steamboats to take which make their landings where the Hartford and New Haven boats make theirs. But the answer says that the Hartford was regaining her way in the middle of the river, and this is substantially true.

But did the Hartford violate the act requiring steamers to keep in the middle of the river?

In reviewing this act the object of the statute is to be regarded. It was to prevent danger to craft going out of slips when they could not see above nor below them, and when they were liable to be run down by steamers running close along the ends of the piers. It compels steamboats to keep where they can be seen, and thus avoided by those closer in shore, and which are about to expose themselves to view and danger.

It is well known that the river at the place of this collision is 1600 feet wide. The Hartford was 500 feet from the Brooklyn piers, while the two ferry boats behind were inside of her track when she first saw the tug, and must have been much more than that when she received the two whistles. The libels put her one-third of the distance across the river (fols. 7, 52), and several witnesses corroborate them.

Now is not this a practical compliance with the statute? To keep in the exact center of the river is impossible. Divide the width of the river into three parts, and it cannot be said that the Hartford was in either of the outside parts any more than it can be said that she was in the middle one.

But in truth this position was in no sense the cause of the collision.

The Niagara, 3 Blatchford, 37.

Fourth.—The answer of the Unit states that she saw the Hartford half a mile distant, and immediately signaled her to go to the left. This of course is not true, nor will the Court be able to find any truth in the pilot of the tug as he swore on the trial. But it comes with a poor grace from the counsel for the tug to charge the Hartford with being too near Brooklyn, when at the distance of half a mile he signaled her to go still nearer as the libel states, and at a greater distance than that, as Kiley the pilot states.

Fifth.—The captain and pilot of the Hartford showed upon the trial that they are careful, intelligent and experienced men, and that on the occasion of the collision they were watchful, and attentive to their duties. Their judgment, their experience and watchfulness, is invoked by the appellants as a protection, and they are entitled to it.

On the other hand the pilot of the tug appeared to be without experience, and not capable of profiting by it if he had it. That he was totally unfit for his position fully appears. His incompetency opens the Unit to every presumption against her.

Sixth.—And for the negligence of the tug, those in her tow must suffer the same as she would be compelled to suffer, unless they can find protection from her.

But it is not clear that they did not aid in the production of the collision by porting as they did.

To show the laxity with which the Unit ignored and disregarded the law, the evidence of Kiley, the pilot, is respectfully referred to (at fol. 107), where he states, that "he knew what boat (Hartford) it was that was coming; and knew where she generally landed;" and in the face of this he gave the *two* whistles.

"Generally a steamer going on a customary route should keep in her usual track." (1 Parsons on Shipping, 571, and cases there cited under Note 2, and again at p. 580.) "In general, established rules and known usages should be carefully followed; for every vessel has a right to expect that every other will regard them."

BUT THE ABBIE S. OAKES WAS ALSO IN FAULT.

Her master had seen the Hartford before the tug blew her two whistles. He knew that the Hartford was heading four points to the starboard of the tow. He knew that upon the two blasts being given by the tug, the Hartford at once broke her sheer to star-

board and commenced sheering to port; and he knew that her movements ought not to be embarrassed. Yet he kept his wheel ported two spokes, the tendency of which was to prevent the tug and tow from sheering to the left as her two whistles indicated she would do.

This fault of the Abbie S. Oakes could not be suggested in the answer as it was not known by the City of Hartford till sworn to by Captain Rideout on the trial.

POINTS.

I.

The causes leading to the collision will be most readily understood by establishing the *accuracy of Diagram No.* 4.

If that diagram has shown to be accurate, we then have a starting point from which our future course is easy.

1. Diagram No. 4 is accurate, and truly represents the positions of the Hartford and the tow, when each opened to the other clear of the point at Fulton Ferry.

(*a*) The diagram was made by Mr. Strickland, pilot of the Hartford, and he testifies to its accuracy. (Folio 95.)

(*b*) Rideout, captain of the injured vessel, says that when he first saw the Hartford *over* the wharves at the point, and when he could not see her hull, there were about four points difference between the courses of the steamer and of the tow; he thinks the tow was running about N.E. ½ N., and the steamer was four points to the westward of the opposite of the tow's course, that is about W. ½ S. (Folios 72, 73.)

[It should be remembered that Rideout was on the Abbie S. Oakes, and was farther out from the Brooklyn shore than any other witnesses connected with the tow, and his opportunities were therefore better for an early discovery of the Hartford, as she opened by the point, and as she was seen over the wharves.]

(*c*) Mansfield, pilot of the ferry boat Com. Barney, followed the Hartford down the river, and noticed that when about off Bridge Street, Brooklyn, the Hartford took a S.W. by W. ½ W. course, which course was about parallel with the Brooklyn piers; that just after she passed Main street slip, Brooklyn, she began to haul off towards New York; "*up to that time I had not heard any whistle from any source.*" (Folio 83.)

The Hartford kept on her port helm till she had sheered so that she was heading to W. ½ S. (Mansfield, folio 85), which was the time that Rideout discovered her, for he gives her that course (folios 72, 73), when the tug also discovered her, and gave the two whistles. (Folio 85.)

(*d*) Captain Dibble, of the Hartford, confirms the positions at folio 90, when he says: "When I heard the tug's first two whistles, she was heading a little across our bow towards New York. I then could see the bows of the two schooners, and the starboard side of the starboard tow."

(*e*) No witness denies that Diagram No. 4 is true; and no witness gives the vessels a position which contradicts it.

II.

At the time and in the position designated by Diagram 4, the Hartford and the tow were from 1,200 to 1,600 feet apart, probably about 1,500 feet apart.

1. The answer of the Hartford (folio 40), states, that after the Hartford had replied to the tug's two whisles, and after she had shut off steam and hove her wheel to starboard, the steamer and tow were about 900 feet distant. This probably was about the distance at that time, though rather under than over.

2. Before that, and when the tug gave her two whistles, Rideout puts the distance at "not over an eighth of a mile off" (folio 73). But it is submitted that this cannot be accurate, even in the view of that witness himself, for at folio 74, he says: "The order to hard-a star-board came after the City of Hartford answered, *and when half the distance that the boats were apart, when the tug blew her whistles, had been run over. At the time the order came to hard-a-star-board, the vessels were, I should say, 600 feet apart.*" This, then, places the vessels 1,200 feet apart at the time the tug blew two whistles. The witness, undoubtedly, speaks more accurately when giving the distance in feet than in fractions of a mile. The libel, sworn to by Rideout, states, the distance at "less than a quarter of a mile" (folio 7), and the libel of Robinson makes the distance the same. (Folio 52.)

3. It is not shown how soon after the Hartford came in sight, Atwood, of the Oakes, saw her. Certainly, he did not see her as soon as Rideout did. Atwood places the distance at from 800 to 900 feet, when he first saw the Hartford. (Folio 79).

4. Dibble puts the distance at from 1,200 to 1,500 feet when he first signalled to the tow. (Folio 89.)

5. Strickland states the distance at 1,600 to 1,700 feet when he first saw the bows of the tow clear of the point. (Folio 94.)

6. Stannard, the bow-watchman or look-out on the Hartford, thinks thst the vessels were 600 yards (1,800

feet) apart, when he heard the two whistles from the tug. (Folio 101.)

7. Kiley, Captain of the tug, states the distance at 500 yards (1,500 ft.), at the time he blew two whistles (folio 105), and again (at folio 105), on his cross-examination, at 800 to 1,000 yards (2,400 feet to 3,000 apart). While the Unit (the tug), in her answer, states the distance at half a mile or more ahead, immediately preceding the tug's blowing two whistles. (Folio 61.)

8. Strang says that when he came on deck the "tug and steamer *were over one-fourth of a mile apart.*"

9. No witness places the distance less than is above stated; and it is clear that the vessels must have been nearly, if not quite 1,500 feet apart when they first began to signal each other.

III.

At the time, and in the position shown by Diagram 4, both the Hartford and the tow were far enough from either shore and from each other for each to pass the other either at the right or at the left, as both should decide.

1. The libel sworn to by Rideout, who, from his position on the Oakes, had as good an opportunity of estimating the distance as any of the witnesses had, says that when the tug was "near the Fulton street ferry slip, on the Brooklyn side of the river, she came in sight of the said steamboat City of Hartford, which was then passing down said river under steam, at less than a quarter of a mile distant up the river, *and being about one-third of the width of the river there from the Brooklyn shore.*" (Folio 7.)

The libel of Robinson (folio 52) also places the Hartford one-third the width of the river from the Brooklyn shore.

Captain Dibble, of the Hartford, states the distance of the Hartford at from 300 to 500 feet from Brooklyn shore when his boat was nearly down to Catharine ferry; and this was before she had sheered to cross the river, and before she had seen the tow. (Folio 89.) Of course she was further off when in the position of Diagram 4.

Strickland makes the distance 150 to 160 yards from the Brooklyn shore before the Hartford commenced to sheer out still further. (Fol. 93.) Nelson states the distance at about a length and a half of the City of Hartford, *i. e.*, 450 feet. (Fol. 102.) Kiley, of the tug, puts the distance less than fifty yards (fol. 107), it is true, but all his estimates are so interesting that they must be carefully read and compared to be appreciated. As an example of it, his testimony at fol. 107, showing how easily the Hartford could have cleared him, and the mode in which she should have done it, is to be compared with the testimony of every witness who swears to the positions shown by Diagram 4, and which is not contradicted by a single witness in the case.

Reilly, of the Hunter's Point ferry boat, estimates the distance at which the Hartford went down the Brooklyn shore, at "from about 100 yards to 150 yards off the docks." (Fol. 87.)

It is not believed that any witness (except Kiley) estimates the Hartford at nearer than 300 feet to the Brooklyn piers that morning, and the result of all the testimony is, that the Hartford, before she sheered to cross the river, was at least 450 feet from the Brooklyn piers, and it will hereafter appear that she must have been upwards of 500 feet distant from those piers when she first signalled the tug.

2. Though the tug was not as far from the Brooklyn shore as the Hartford was, still her distance was such as would enable her to go either side of the Hartford, and the Hartford either side of her, should they act in concert.

(*a.*) Rideout states the distance at 75 to 100 yards when he first discovered the Hartford. (Fol. 72.)

(*b*) Atwood makes the distance 75 yards when the tug whistled. (Fol. 78.)

(*c*) Kiley, of the tug, with his usual accuracy, makes the distance twice as great as the other witnesses, viz., 150 yards (fol. 104); and that he makes this estimate as of the time when the other witnesses make their's, is evident from what he says at folio 105. At folio 107 he states the distance at 150 yards when he blew his two whistles, but as he had been for some time heading towards New York (fol. 107) —"after straightening up, we were heading toward New York all the time"—it is clear from his statement, if any reliance is to be placed on it, that when the Hartford was at Diagram 4 the Unit was much less than 150 yards from the Brooklyn shore.

It is safe to say that at Diagram 4 the tug was from 75 to 100 yards (225 to 300 feet) from Brooklyn.

It is believed that the above embraces all the testimony on that subject.

IV.

We are now prepared to draw the proper inferences from Diagram 4.

It presents a case of two steam vessels approaching each other on intersecting lines, about 1,500 feet apart, with the Hartford from 150 to 200 feet farther off from Brooklyn and out in the stream than the tug, with the tow a little off the port bow of the Hartford (fol. 94), and presenting her starboard broadsides to the latter steamer. (Fol. 94, and see the position as presented by Diagram 4.) Owing to the bend of the river there, as well as to the fact that the Hartford's destination took her across the river, she is already sheering on a ported helm towards New York. The tow has now just come out by the point,

and the Hartford is, for the first time, able to judge of her course, distance, &c.

What now should the Hartford do?

1. If there were no sailing directions whatever established by law or custom, it would seem perfectly natural, under these circumstances, that the Hartford should roll her wheel to port, and notify the tug that she should take the most natural and easy course to render a collision impossible.

2. But under the sailing directions, as well as by usage, the Hartford should also have pursued the course just indicated. (13 U. S. Stat. at Large, page 60, Arts. XIII, XIV.)

"If two steamboats are approaching each other, in such a direction that there is danger of a collision, each should go to the right." (1 Parsons on Shipping and Admiralty, p. 569, and cases there cited under note 4, also pp. 559, 560 and 589.)

3. The same rules and regulations required the tug to permit the Hartford to do this.

"If two ships, under steam, are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other." (13 U. S. Stat. at Large, p. 60, Arts. XIII, XIV.)

Where "The *red* light (port side) of B. is in view to A., and the *green* light (starboard side) of A. in view to B., this will inform both that they are approaching each other in an oblique direction. A. should put his helm to *port*, according to the standing rule mentioned in the next or sixth situation, *and pass astern of B.*, while B. should continue on his course, or keep away if necessary to avoid collision; each having previously given one blast of the steam whistle, as required by the rule when passing to the right." (1 Parsons on Shipping and Admir. p. 559 and 560.)

"It is clear, upon the evidence, that the Cleopatra, at the time she first descried the Niagara as the latter

was rounding the Hook (Corlear's), ported her helm to pass on the right, and that if the Niagara had ported hers, *as was her duty according to the established general rule*, both vessels would have passed free." (The Niagara, 3 Blatchford, 37.)

4. The Hartford, in fact, did then give the tug one whistle to indicate to the latter that she (the Hartford) should keep on her course and cross the bow of the tow. (Fols. 89, 90, 94, 99, 100, 103, 104; but the testimony at folio 104 is Kiley's, and he leaves it a little uncertain where he thought the whistle came from, but as there is no evidence of any other single whistle at that time, it is probable that Kiley here has blundered pretty near to the truth.)

5. But the tug disobeyed the regulations established for her management, and refused to give the Hartford the right of way to which she was entitled.

VI.

The libellants' charge in their brief (though not in their libel, nor does the Unit charge it in her answer), that the Hartford erred in the course she took, inasmuch as she did not wait for the Unit to take the initiative to which, it is claimed, she was entitled.

There are several answers to this charge.

1. It would have been more satisfactory if the libellants had pointed out the law or usage which gave the Unit the right to the initiative. It is submitted that the law and rules cited in the Vth Point above, not only do not confer on her such right, but deprive her of it.

2. The shape of the land at that point, and the bend in the river, took the Hartford so across the Unit's bow that she could not have failed to see that the course of the Hartford was determined rather by circumstances than choice.

3. The libellants claim that the Hartford immedi-

ately upon blowing her one whistle, ported her helm to such an extent as to render it afterwards impossible for her to starboard sufficiently to clear the tow by going to the left.

Even if this were so, it would not, as we understand the law, be a fault in the Hartford. She had the right to do that very thing. Under Art., 18 of the regulations, such a manoeuvre would only take her further from danger. Being already on a sheer, a still larger sheer violated no rule whatever.

But the charge is not true, either in its allegation of fact, or in its inference.

(*a*) Before the blowing of that single whistle, and before the tow hove in sight, the Hartford had taken a sheer towards New York, and was on a ported helm.

Dibble says: "When nearly down to Catherine ferry, then I told Strickland to let her work over towards New York shore. * * * * * * * When I so spoke to Strickland, *the wheel was a little to port, and she was gradually working from Brooklyn shore. When I blew the one whistle she was still swinging and working off towards New York.*" (Fols. 89, 90.)

Strickland says: "When I saw this tow coming I was heading then the same course I had straightened on at Jay street, that was a heading for very near Wall street ferry on New York side." (Fols. 93, 94.)

Again he says: "When the tow opened out first, so that I could see her course * * * * *our wheel was a little to port*, just enough to keep her steady. It was about time for us to haul over towards Peck slip. *After we saw the tow open, nothing was done to our wheel before starboarding, except enough to keep her steady.* (Fol. 95.)

Young, a wheelsman of the Hartford, says: "We were heading a little off the Brooklyn shore." (Fol. 99.)

This confirms both Dibble and Strickland, and shows that the Hartford was then on her sheer to starboard.

Stannard, the bow watchman of the Hartford, says: "I think the City of Hartford was on a sheer when she blew her first whistle. She sheered to the right." (Fol. 101.)

Kiley, of the Unit, does not accuse the Hartford of porting. He says: "When I gave the Hartford that signal (two whistles), she was about 500 yards off from me, or it might be more. *At that time the City of Hartford was coming very nearly straight with the river.*" (Fol. 105.)

It is to be noticed that this was while the Hartford was on what the libellants would have believed to be a rank sheer to starboard. Kiley explains it all. He says: "there is a bend at Fulton ferry." (Fol. 105.)

When Kiley speaks, below (fol. 105), of the Hartford changing toward the New York shore, after she blew one whistle, he refers to the one whistle which he says she blew after she blew her two whistles, and which no one heard but he, and which in fact was never blown. He does not refer to the one established whistle of the Hartford, which the libellants claim she had no right to blow. (See fol. 105.)

At the last folio cited, he says: "After that" (*i.e.*, after he blew two whistles and received an answer of two whistles.)—"After that, and before the collision, I heard from the City of Hartford one whistle. AM CERTAIN." (Fol 105.)

So it was after *this* one whistle *which he is certain he heard, but which never was blown*, that he noticed the Hartford "changing toward New York." (Fol. 105.)

Thus he corroborates—in so far as such testimony can corroborate anything—the statements of those on board the Hartford that at the time of blowing her one whistle she was nearly following the bend of

the river, and gradually working over toward New York. Also, see Kiley's testimony at folios 107 and 108; where he intensifies his former testimony, and demonstrates that we have correctly apprehended it above. The only difficulty with the last citation is its inherent improbability and its absolute contradiction of every other witness.

But the most unique piece of testimony to prove the fault of the Hartford, in that she ported too strongly, is furnished by the deposition of "John Redmond, being about the age of fifty-six years" (fol. 116), taken on behalf of the Unit. He had testified that while the Hartford was a good length of herself off, he thought there would be a collision (folio 117), and he had formed a judgment and thought the Hartford to blame. (Fol. 118.)

Upon cross-examination by the counsel for the Hartford, he was asked:

"*Q.* Why do you say you thought the Hartford to blame while she was yet her full length from the schooner?

"*A. Because she never ported her helm to come to the New York side; if she had ported her helm she would have cleared her.*

"*Q.* How do you know that the City of Hartford did not port her helm?

"*A.* Because her angle would have been visible to me long before that." (Fol. 119.)

(*b*) We repeat, then, that the proof is clear that the Hartford, after discovering the tow, did not change her course, but continued on her sheer towards New York.

(*c*) But we also insist that even if the Hartford did heave her wheel to port, she was perfectly justifiable in so doing. Such a manœuvre was only throwing her still further from the tow, and was diminishing the danger of a collision, as provided by Articles 14 and 18 of the sailing regulations.

(*d*) It will hereafter be seen that the Hartford was

not under a rank sheer at all, and that upon starboarding she readily conformed to a changed condition of affairs.

VII.

The libellants follow up the charge against the Hartford, and seek to give it force in the statement: "Moreover the tug did not then know what we now know that the City of Hartford was under a port wheel and sheering to starboard."

1. Where, then, was the fault? Who was misled? When the libel was drawn the libellants did not know it. When the Unit put in her answer she did not know it! Neither Rideout nor Strang nor Atwood knew it. Kiley of the tug expressly contradicts it, for he says the Hartford did not change her course. (Fol. 105.)

These facts clearly prove that whatever sheer the Hartford made after her one whistle was but a continuation of the sheer she had commenced before the tow hove in sight.

2. But should not the tug have known it? The Diagram No. 4 itself demonstrates that the sheer was patent to all who were watching the Hartford. And though the men on board the Oakes and Col. Jones do not speak of a sheer by the Hartford, they yet verify that diagram, which proves the sheer was being made.

Mansfield, pilot of the ferry boat commodore Barney says: "The City of Hartford had reached just below Catherine Ferry, when she hauled to westward. * * * * On her sheer to westward she changed about three points; * * * * on that sheer she ran about 50 yards; *then came the two whistles from down below;*" the three points brought her to W. half S.; she was heading about W. half S. when the two whistles from below blew, and swinging." (Fol. 85.) Which is exactly the course given her by Ride-

out when he first saw her (fol. 73,) showing that she had already swung three points, and was still on that swing when she first saw the tug; when she gave the tug the one whistle, andwhen the tug replied with two whistles. It is impossible to believe that this gradual swing by a large high steamboat, 300 feet long, would not be noticed by any one in her vicinity who was properly looking out.

3. The Unit should have left the Hartford to the course she was pursuing, whether the sheer was noticed or not.

(*a*) Without a sheer the Hartford was standing across the Unit's bow, and had the right to keep her course.

(*b*) With a sheer the Hartford's course, with reference to the Unit, was the same.

4. The error of the libellant's argument is the idea that the Unit had the right to dictate to the Hartford her course. Such is not the law. The Hartford was to make no change which should jeopardize the Unit in any change she chose to make; and that is all that was required of her. Suppose she had seen a vessel ahead, and was on a sheer to starboard to avoid her; must she, upon discovering the Unit on her port hand, check her sheer till she hears from the Unit? But she was sheering over to her slip; why should she check that sheer upon discovering the Unit on her port hand?

5. As if to deprive the Unit of every excuse, and make everything perfectly plain to her, and to show her exactly what the Hartford was doing, the latter steamer, while on this sheer, and before the tug had given any signal whatever, blew one whistle to the tug to notify her the course the Hartford was upon (folios 94, 89, 90, and *passim*); and this is not denied by Keily of the tug. Strickland adds: "The tug's two whistles followed our one whistle

sufficiently soon to be considered an answer." (Folio 99.)

6. In view of this evidence and of the physical facts—stronger than any human testimony—what room is there for an argument based on the view that the tug did not know what the Hartford was doing? The Hartford has no fear of that argument.

VIII.

We are now prepared to move forward and consider what followed the position at Diagram 4.

The Hartford had already blown one whistle, and now she receives in response two whistles from the tug.

1. We have already seen that the tug had no right to give these two whistles. But it is claimed that inasmuch as the Hartford acquiesced in them, she cannot now complain.

To determine the justice of this claim, the circumstances are to be considered.

(*a*) The tug by these whistles showed that *her* determination was to keep to the left, and cross the Hartford's bow: and the only way in which the Hartford could refuse acquiescence would be to stand on her course in spite of the notice she had received. Would this have avoided a collision? The answer is furnished not only in the positions of the vessels, but also in the testimony.

Dibble says: "If I had kept on in spite of her whistles, she acting on her own whistles, and going to my starboard, there would have been a collision; *I could not have avoided it*" (folio 91), and he is not contradicted by any witness.

(*b*) It must not be forgotten, in the language of the libellant's brief, "that the tug with her tow was under obvious disadvantages as compared with the

City of Hartford. She was heavily incumbered; could control herself much less easily, and was in some degree at the mercy of a powerful tide, which was sweeping her towards the City of Hartford. The latter was free from these disadvantages, and held in her hands much more completely than the tug a control over the chances of the situation."

And *these*, if the Court please, are the considerations urged against the Hartford, because she acquiesced in the tug's signals! An unsophisticated mind would be apt to judge the other way.

(*c*) The Hartford at once saw, and correctly saw, as the sequel will prove, that she could safely acquiesce in the course chosen by the tug, and could pass her to the left.

(*d*) She therefore, in view of the "obvious disadvantages," as well as of those which were not so "obvious," but which she still might suspect, acquiesced, though in view of these disadvantages, it can hardly be said "voluntarily and under no compulsion," in the signals of the Unit.

IX.

The Hartford, upon receiving the two whistles from the tug immediately replied with two whistles, shut off her steam, hove her wheel hard to starboard, at once broke her sheer to westward, and sheered in towards the Brooklyn shore. (Folio 94.)

That this was an effectual manœuvre, and precluded all fear of danger, we now proceed to show.

1. We have already seen that at Diagram 4 the vessels are about 1,500 feet apart. Attention is now called to Diagram 2, where the vessels are shown to be from 400 to 600 feet apart; and we are first to show that this diagram is true. It will be observed that this diagram shows the steamer to be heading

for the starboard bow of the Col. Jones, which was the starboard schooner of the tow.

(*a*) Rideout says: "The vessels were between 400 and 600 feet apart when the bells (of the Unit) rang to back, and the City of Hartford was heading for for starboard cathead of Col. Jones." (Folio 75). At this time the Hartford had "swung into the Brooklyn docks 50 to 75 yards from ends of piers." (Folio 75.) Again he says: "When 600 feet off, I starboarded, and the City of Hartford was heading for the Col. Jones; *the City of Hartford* COULD HAVE GONE CLEAR OF US TO STARBOARD, *though close.*" (Folio 75.)

Again he says: "When the bells (of the Unit) were rung, she (Hartford) headed for the starboard cathead of Col. Jones" (folio 75); and at folio 76, this witness, Captain Rideout, of the Abbie S. Oakes, and one of the libellants, "makes diagram of City of Hartford, pointing to starboard cathead of Col. Jones, and when they were from 400 to 600 feet apart —No. 2." Atwood says: "It was pretty soon after the tug blew her whistles that the City of Hartford commenced to swing." (Folio 79.)

(*b*) Dibble says: "When I rang the three bells (this was after the Unit changed again), the heft of the tow was on my starboard bow; we were pointing for about the starboard schooner's bow. At that time we were about 300 feet from the starboard's schooner's bow—a little more than the length of my boat—from once to twice our length." (Folio 94.)

(*c*) Strickland expresses his view of Diagram 2 by drawing Diagram 5, and says that diagram represents the position when he heard the tug blow one whistle (folio 98), and which whistle the Unit would have us believe was a puff of steam caused by opening the exhaust. (Folio 111.) It will be noticed that Strickland's diagram differs from Rideout's in giving the Hartford a little larger sheer to port, and making her point aft of the Col. Jones' starboard cathead, instead of at it.

(*d*) Kiley says that when he blew the two whistles the Hartford was less than fifty yards from the Brooklyn shore, and was "*enough on our starboard bow, so that if she had kept her course she would have cleared us one hundred feet on my starboard side.*" (Fol. 107.) As all the witnesses show that the Hartford was nearer to Brooklyn at collision than when the two whistles were blown, it is very evident that there was a time when Kiley judged correctly that the Hartford would clear him to starboard.

The witnesses for the libellants substantially agree that Diagram No. 2 is correct, though we claim on behalf of the Hartford that it should be modified as represented by Diagram 5.

2. But Diagram 2 could not be true unless the Hartford had changed her course in towards Brooklyn by starboarding, as she had agreed to do when she replied to the tug's two whistles.

(*a.*) This is shown by comparing the two diagrams 4 and 2.

(*b.*) The same diagrams will show that the tug sheered but slightly, if at all, to the left, after she had signalled that she should do so.

(*c*) This position also shows how readily the Hartford broke her starboard sheer and swung to port upon receiving the tug's signal; and here is a full refutation of the libellants' argument that the Hartford's sheer to starboard, when the tow first opened to her, was an embarrassment to her subsequent movements. She was under perfect control and ready to take either course as safety should require.

3. It clearly appears here that the tug did not, with her tow, sheer to port, as she should have done after signalling her intentions to do so.

(*a.*) Diagram 2 is made before the tug has commenced to back, and before she has commenced her sheer towards Brooklyn. (Fol. 76.) [The tug claims

that it was the backing of her screw that headed her towards Brooklyn. (Fol. 62.) How true this is we may examine by and by; it is enough here to say that she claims that she held her course on a starboard helm till her backing sheered her to port; and as she was not backing when the Hartford pointed at the starboard cathead of the Col. Jones, she had not commenced a sheer to starboard when Diagram 2 was drawn. But she did commence it immediately afterwards.]

(*b.*) Rideout says the starboarding of the tug did not swing her to port half a point (fol. 73); and at folio 74 he says that that the Hartford answered the tug's two whistles in three seconds, and yet *he got no order from the tug to hard-a-starboard until half the distance that the boats were apart, when the tug blew her two whistles had been run over.* And at folio 71, he says: "Part of the space between the steamer and tug had lessened, when the pilot of the tug ordered me to put my wheel hard-a-starboard," and this was "very soon" followed by the bells of the tug to stop and back. (Fol. 72.) [We have already seen (Point II, subdiv. 2) that the vessels ran over a space of 600 feet after the tug blew her two whistles, before she gave this order to hard-a-starboard.]

And at folio 74 Rideout gives the time, which, is, by the watch, *five seconds*, between the order to starboard and first bell, which was the tug's bell to stop, &c.

And as if to make himself very clear, he again says at folio 75, "the vessels were between 400 and 600 feet apart when the bells rang to back." As this was but five seconds after the order to starboard was given, and as that order was not given till one-half the distance the vessels were apart, when the tug blew two whistles, had been run over (fol. 74), it is clear that this witness means to say that when the tug blew her two whistles the vessels were about 1,200 feet apart, and that one-half of this distance

was run over before the tug gave the order to starboard, and that five seconds afterwards she began to back and sheer to starboard. [And this proceeding the counsel for the tug gravely contends was no fault! Will he tell us, then, where, in human transactions, nay, in *any* transactions, fault is to be found?]

4. But with this sluggish starboaring by the tow, there would yet have been no collision if she had kept on.

(*a*) Already the Hartford, without aid from the tug, had so sheered from the position at Diagram 4, when she had the tow just off her port bow, that she had located the whole tow on her starboard bow, and was so heading (Diagrams 2 and 5) that a further sheer of ten feet, perhaps less—certainly less than one-fourth of a point—would entirely clear her of the tow, and she still had from 400 to 600 feet to work in before coming on a line with or up to the tow.

Rideout makes the distance 400 feet off when the tug rang her first bell to stop. (Fol. 73.) Again he puts it from 400 to 600 feet (fol. 75), and he adds, "*when the City of Hartford was 600 feet off I thought she would clear us—I thought she would pass to our starboard.*" (Fol. 74.)

Dibble, later than this, and when he rang three bells, and after he had discovered the change of the tug to the Brooklyn shore, and in consequence had blown three whistles, makes the distance 300 feet (fol. 90), which, allowing for the difference of time in which the estimates are made, agrees with Rideout, as from 400 to 600 feet.

Strickland agrees with the other witnesses. (Fol. 94.) He makes the distance 300 feet when the Hartford commenced to back. Stannard says the same. (Fol. 101.) And no witness contradicts this distance. Indeed Kiley states the distance at from 125 to 150 yards. (Fol. 105.)

(*b*) Rideout saw that the Hartford's starboarding was effectual to prevent a collision.

He says: "After the tug blew and the City of Hartford answered, I had no idea of any danger; we were within 300 feet of the City of Hartford when I first had an idea of danger; when the tug rang her first bell, the City of Hartford was 400 feet off, I should say." (Fol. 73.) He means to say that the Hartford had so sheered to port, that until she was within 300 feet of him he apprehended no danger, and that when she was 400 feet off, he thought all safe; but this was just the time the tug rang to back, and began to swing to starboard, and while she was doing this and the vessels came 100 feet nearer to each other, he began to think of danger. His testimony at folio 73 clearly shows that he judged at the time there would be no collision, and that he did not change his opinion till the tug had materially changed her course, which change was, as he says, four points. (Fol. 73.)

(*c*) Strang says that the backing of the tug turned the heads of the tow towards the Brooklyn shore, *and fetched them head on to the City of Hartford.* (Fol. 68.) And again he says: "When I saw we were going astern, *I ported to sheer the vessel away from the Brooklyn shore, which it had a tendency to do, to give City of Hartford a chance to pass on my starboard hand.*" (Fol. 89.) And this was after he came on deck, *and after he had heard the second whistle*, which he says, and which we claim, the tug blew, but which the tug claims was a puff of steam. (Fol. 69.) But this porting did not effect the swing of the tow: "they kept swinging all the same." (Fol. 69.) But for this swinging "all the same," his opinion seemed to be that the Hartford would pass on his starboard hand.

Reilly, of the Hunter's Point ferry-boat, though some distance astern of the Hartford, noticed "that when she sheered to the southward, she brought into his sight her wheel on her port side, and he saw it backing" (fol. 88), thus adding another witness to the efficacy of the Hartford's starboarding.

(*d*) We have already seen (Point III, subdiv. 1) that before the Hartford starboarded she was from 450 to 500 feet from Brooklyn wharves. But Rideout tells us that "when the tug rung to back, the City of Hartford was swung into the Brooklyn docks 50 to 75 yards from ends of piers" (fol. 75), thus proving that the starboarding of the Hartford, after the tug gave her two whistles, had changed her position in shore from 275 to 300 feet.

(*e*) The proof is that when the tow hove in sight the Hartford was heading towards the New York shore, "for very near Wall street ferry, on New York side" (fol. 94); but on a starboard helm, she so sheered, that "at the time of the collision, she was heading a little on the Brooklyn shore."

(*f*). The evidence is that the starboarding of the Hartford was so effective, that had the tug kept on, as indicated by her two whistles, there would have been no collision. (Fol. 94.)

It is clear, then, that when the Hartford accepted or "acquiesced" in the two whistles of the tug, she judged wisely that she could do so safely, and that had the tug kept on with a starboard helm, or even straight ahead, no collision would have occurred.

X.

But now the tug, in utter disregard of her own signals, and of the assent to them, which she knew had been given, suddenly checks her port sheer, and turning almost on her heel to starboard, throws herself directly across the new course she had laid out for the Hartford; and the circumstances were such as to enable her to do this with fatal facility.

1. She had scarcely sheered to port after signalling that she would do so. Kiley says *he did not shift his helm at all* after the Hartford's two whistles. (Fol. 108.)

2. The wheel of the Abbie S. Oakes was set two

spokes to port (fol. 71), to incline her to hug the tug, and kept so, till the tug ran 600 feet, after she blew her two whistles, as we have already seen. This of course retarded a sheer to port.

3. It is claimed on behalf of the tug that the back action of her propeller of itself was sufficient to turn, and did turn, her head, with the heads of her tows, to starboard.

4. Strang, of the Jones, had his helm hard aport half a minute or a minute before the collision (fol. 69), for the reason, as he states, that he supposed the vessel had stern way; but we shall presently show he was mistaken.

5. And with all these facilities, we yet submit that the tug could not have turned her tows as speedily as she did, had not her own wheel been ported also. Certain it is, however, that from a course "gradually turned to the left and angling toward the New York side" (see answer of Unit, fol. 62), "heading towards New York all the time" (Kiley, fol. 107), "heading towards New York, towards pier 47 or 48, or 49, going six or seven miles with the tide" (Kiley, fol. 108), and in the position represented by diagram 4, the tug suddenly, and as she would have us believe, without warning—for she says she did not blow the one whistle, certainly she did not blow three—sheered towards Brooklyn, and directly across the bow of the Hartford, and presents the appearance just as shown at diagram 2, and immediately after that shown at diagram 6.

And she had such headway on her also, that she actually approached at least from 75 to 150 feet nearer the Brooklyn shore than she was when Rideout first saw the Hartford (fol. 72, where Rideout says he was 75 to 100 yards from Brooklyn shore when he first saw the Hartford, and fol. 73, where he says he was not 50 yards from end of pier on Brooklyn side when struck); and this, be it remembered, was in spite of all the offing the tow had made after her two whistles.

And here it is to be noticed that the tug is reduced to the alternative of saying that, though she signalled to the Hartford, she was going to the left, she yet did not do so; or if she did do so, that she afterwards again sheered to the right enough not only to overcome the port sheer, but actually to carry her, say 100 feet, perhaps 150 feet. nearer the Brooklyn shore than she was when she blew two whistles.

These conclusions are absolutely demonstrated by the testimony, and if they prove the Unit innocent, as her counsel claims, and as the District Court below thought, she is entitled to their benefit. The Hartford is not so ungenerous as to desire to deprive her of the benefit of so much care and foresight.

But do they prove such innocence?

XI.

But for this action on the part of the tug there would have been no collision; and with it a collision was inevitable.

The reasoning which proves one of these propositions demonstrates the other.

1. We have already seen (Point V, subdiv. 2) that when the two vessels opened to each other by the point, the tow was from 225 to 300 feet distant from Brooklyn, and that she was then heading obliquely towards New York—a course which would take her still further from the Brooklyn shore.

By the sudden change of her course she was at once swept in so far that the bow of the Abbie S. Oakes, which was the outer vessel and farthest from Brooklyn, was less than 50 yards from the end of the pier when struck (Fol. 73). Prior to this and "when the tug rang to back, the Hartford was swung into the Brooklyn docks, 50 to 75 yards from ends of piers" (fol. 75); the tug had swung to star-

board so as to overcome the four points she was heading to westward of the Hartford, when the vessels first opened to each other (fol. 75); the Hartford is yet from 300 to 400 feet from the tow (fol. 75), of course with a rank sheer to port, and following the sheer of the tow as a necessity, for her sheer was too great to be broken in an instant.

It will be seen that this manœuvre entirely blocked the way of the Hartford, and shut her out from the only course the tug had conceded to her. Of course the collision then must come. Nothing could avoid it. The tide was pressing the tow towards the Hartford at a speed of 4 to 5 knots, even if the tug had ceased her headway, which is not probable.

It may be objected that some of the witnesses state the distance at the collision further from Brooklyn, than Rideout, who is above cited, states it. But no witness had a better opportunity to judge the distance than he had; and it is proper to say that no fairer or more intelligent witness was produced by either side than Rideout was. He was deeply interested to watch the movements of the vessels. He was master and part owner of the Abbie S. Oakes. He swore to the libel in his own case. He is not materially contradicted as to the distance, though it is true some other witnesses state it much larger. Atwood states the distance from Brooklyn at 75 yards at time of collision. (Fol. 78.)

2. But it is charged that here the speed of the Hartford was too great, and that had it been less the collision might not have happened. The facts in the case furnish a ready answer to this.

(*a*) We have seen that if the tug had kept on as indicated by her two whistles, no collision would have occurred. Now, the Hartford had a right to assume that the tug would keep on under a starboard helm, and on that assumption there was no call for her to slack her speed.

(*b*) But, in fact, she did shut off her steam immediately upon receiving the tug's two whistles (fols. 90, 94, 92), and after discerning that the tug had again changed, she immediately commenced to back. (Fols. 92, 90, 94, 88.) Where the witness saw the Hartford reverse and back her wheels before he saw the tug. (Fol. 84.) Where another saw the Hartford's wheels begin to reverse and back, just about the time he caught sight of the tow.

It is true, some of the libellant's witnesses state that the Hartford's wheels revolved forward till just before the collision. But it is submitted that with the Hartford heading directly towards those witnesses, as they say she was, they could not tell whether the wheels were moving forward or backward; and especially should this testimony be disregarded in view of the fact that every witness who was so stationed that he could determine the fact accurately, contradicts them; and the engineer who handled the engine confirms the slowing and backing. (Fol. 92.)

(*c*) This slowing and backing had killed the Hartford's headway, by the land. (Fols. 91, 84, 101.) When the witness Redmond first saw the Hartford, "she was going, perhaps, a good three knots." (Fol. 116.) "She slowed afterwards. Her wheels were moving ahead when I first observed her." (*Ibid.*) "The Hartford was going slower than usual when he first saw her." (Fol. 120.)

3. In the opinion of the witnesses, there would have been no collision but for this action of the tug. (Fol. 94.)

4. If it is insisted that the tow was further from Brooklyn than is assumed in this Point, and that therefore some of the reasoning does not apply, the answer is, the vessels being nearer the middle of the river, both had decided that it would be safe to starboard; but this safety lay in the fact that both should starboard and should keep so. The Unit did not keep so, while the Hartford did.

XII.

It is clear that Kiley, the pilot of the Unit, was an incompetent man, and that his incompetency, and the confusion into which it led him were, with the porting of the Oakes, the sole cause of the collision.

1. His whole story about the distance and position in which he first saw the Hartford, is physically impossible, owing to the projection at Fulton ferry, which wholly prevented his seeing the localities he speaks of.

2. Diagram 4 shows that he did not understand what he was doing when he directed the Hartford to go to his starboard by blowing the two whistles.

3. His suddenly backing and sheering in towards Brooklyn, without, as he says, any warning of his whistles, proves that he had not the coolness and judgment which his position demanded.

4. While the other men on the tow watched the movements of both vessels, so as to describe them, Kiley was so confused that he saw nothing as the others saw it, and he was so frightened that he abandoned his wheel. [He says himself: "I left the wheel on account of danger, just before she struck," (fol. 104); and diagrams 5 and 6 will show how much danger *he* had to apprehend.]

5. His hearing one whistle from the Hartford, after she had answered his two whistles, which one whistle was never blown, and not hearing three whistles, which were blown; his uncertainty as to whether he heard the Hartford's first single whistle (fol. 104) though he "heard one whistle, it might have been from her or it might have been from a ferry boat" (fol. 104); his confusion as to distances, both at the collision and the trial—coming on the stand a second time to rectify his testimony after some one had talked to him, and told him "he had got the distances wrong" (fol. 113); all show his incompetency.

6. The answer of the Unit tells us "that the course of the said steam tug Unit was up along the Brooklyn docks and piers, and from about 70 to 100 yards therefrom; that when at a point at or nearly opposite the Fulton ferry, on the Brooklyn side, the Hartford was discovered half a mile or more ahead, coming at a rapid rate, and upon a line inside of the said steam tug and her tow." (Fol. 61.)

He who drew this answer undoubtedly got his information from Kiley; yet the proof is that the Hartford was at least two hundred feet outside of the tow, and was standing four points westward of the course the tow was making, and was as represented at Diagram 4; and this is so, notwithstanding that Kiley in his testimony (fol. 104) contradicting the distance above given, says that he was 150 yards from Brooklyn at the Fulton ferry. This was before he blew his two whistles. (Fol. 61.)

Taking the statements at fol. 104 and at fol. 61, and if they mean anything, they mean that the tug was "at a point at or nearly opposite the Fulton ferry, when she discovered the Hartford, which was then half a mile distant, and crossing from point of Corlear's Hook, at Jackson street, over towards Brooklyn shore." How then did it happen that the collision occurred just about at the point where the tug was when she first discovered the Hartford half a mile distant? And how happened it that while the Hartford was traversing that distance against a strong tide, the tug had made only 25 yards off shore, though "going six or seven miles an hour by the land?" (Fol. 105.) As the tug was going six or seven knots, and the Hartford 8 to 8½ knots before she slowed (Mansfield, fol. 84); six or seven knots by the land (Dibble, fol. 89); about 6½ knots (Strickland, fol. 93); it is clear that Kiley has stated the positions and distances all wrong, when he first saw the Hartford, for had he been correct the collision

should have occurred about off Rutgers slip, or nearly opposite or above the sectional docks.

7. Now, what reliance can a court put upon the judgment, and management, and coolness, and prudence of such a pilot, to say nothing of such a witness? Had he done as the Hartford told him to do, he would have done right. Had he done as he said he would, he would have been safe. Had he at the outset blown three whistles, and done nothing else, no harm would have happened to him. But he did none of these things; and yet it has been judicially decided he was innocent.

8. It is decided he was innocent in sheering towards the Brooklyn shore and placing himself across the Hartford's track. Why? Because he was then in the "jaws of peril." (See Judge Blatchford's decision.) But how came he in the jaws of peril? If it has not already been shown that he placed himself there, then there is no force in facts, figures, position, or testimony. Moreover, when was he in the jaws of peril? Not before he commenced backing, for we have seen that but for that the collision would not have happened. But did he deem himself in peril before he commenced backing? Then certainly the fault is all his own.

(*a*) The Hartford had done precisely as he directed her to do; and after he blew two whistles, nothing occurred which he should not have expected would happen.

(*b*) Not a witness swears or thinks that there was peril before the tug commenced backing and sheering towards Brooklyn. Their testimony is all the other way.

(*c*) If, then, Kiley's judgment differed not only from the facts, but from the opinion of every other witness at the time, where is there ground for saying that peril protects his conduct? Others saw no peril; why should he see it? The truth is that he was utterly incompetent for his position, and by reason

of that incompetency he could not tell at the trial, and in fact never knew how the collision happened.

Every manœuvre he made was wrong, and then, as if to render it impossible for the Hartford to accommodate herself to his mistakes, he failed even to carry out his blunders with celerity, with the exception of the last.

XIII.

When, upon the argument, the counsel for the Unit felt the pressure of the mistake—blunder is the better word—which the tug made in blowing two whistles and starboarding, he sought to escape by alleging that the Unit sheered to port in order to avoid the eddy near the Brooklyn shore. Was the counsel satisfied with that excuse?

1. The Unit had not set up such excuse in her answer.

2. None of the libellants had spoken of such excuse, and so far as we know it had not occurred to them.

3. Such excuse is wholly inconsistent with the facts, and with Kiley's (of the Unit) view of them at the time.

(*a*) He tells us that the Hartford was coming down on a line inside of him, and that, if she had kept on, she would have passed him 100 feet to his starboard; and that when he blew his two whistles, he was 150 yards from the Brooklyn shore, while the Hartford was only 50 yards (Fol. 107).

Now, if this is true, it will be noticed: first, that it contradicts Diagram 4, which all the other witnesses agree upon; second, that he really took the proper course when he blew two whistles and starboarded; third, that there is no room for the position that he starboarded to keep out of the eddy.

4. But the widest part of this eddy does not extend over 50 feet from the Brooklyn shore (fol. 113), and when the tide is running up it is slack water in there; sets down very little (fol. 113).

5. On the trial, the eddy was not mentioned by Kiley, and he was not asked for such an excuse The testimony on that point came out incidentally from other witnesses called by the Unit.

XIV.

The excuse which the Unit gives for stopping and backing is so clearly untrue, that we are led to believe that she framed her answer on the basis of excuses, without any reference to the facts. Her answer (fol. 62) states, that after she blew two whistles and starboarded, the Hartford blew a single whistle, but too late to allow the tug to change her course, and so, as the only alternative, the bells of the tug were rung to back, &c. And Kiley, at fol. 105, tells us that when then Hartford blew one whistle, he noticed *she was changing toward the New York shore.* He noticed that the Hartford then was aiming for his starboard bow (fol. 105), at the same time he was drawing off from the Brooklyn shore; and then he says, "WHEN *I received that one whistle, I stopped and backed. I made up my mind* THEN *there was going to be a collision.*" (Fol. 105.) Certainly he did! And yet every word of this is proved to be untrue by every witness (except himself) who testifies in the case.

The Hartford was not changing towards New York, but was on a sharp swing towards Brooklyn. She did not blow the one whistle he speaks of at all. Not another witness pretends to have heard it, and it is expressly contradicted. The Hartford was not at that time aiming for the tug's starboard bow, but for the Col. Jones' starboard cathead. And the men on

both schooners thought all was safe, as did they on the Hartford.

What downright folly, then, to say that an unblown whistle from the Hartford was the forerunner and the prophet of a collision! And yet the inventor of these facts asks for a certificate of innocence on the ground of peril. Had he asked it on some other grounds, he might have been entitled to the certificate, but only on condition that it contained a clause sending him to some other avocation requiring less excuses.

XV.

It is clear that Kiley claimed to have heard that one unblown whistle, that his subsequent conduct might be explained.

We think there can be no doubt that he blew one whistle, and ported and thus sheered towards Brooklyn.

1. The Hartford in her answer, charged the blowing of this one whistle upon the Unit.

2. Strang heard this whistle (folios 67, 68.) Mansfield heard it (folio 82.) Dibble heard it (folio 90), and when he heard it the tug was already "changing and sheering towards Brooklyn" (folio 91), and when he "heard the tug's first [should be *one*] whistle, he observed she was swinging towards the Brooklyn shore, head towards us" (folio 91), and when the tug blew her one whistle he could have done no more than he did to avoid the collision (folio 91.) Strickland heard it (folio 94), and when he heard it the vessels were 600 feet apart (folio 94), and before he heard it, he observed the tug was changing towards the Brooklyn shore (folio 95.) Young heard it (folio 100). [The word "one" on the line at folio 100 should be "our."] "I heard

our signal of three whistles." Stannard heard it (folio 101.)

3. They attempt to explain this whistle by calling it a puff of steam from the opening of the exhaust. But this hardly explains how so many old and experienced steamboat men should be mistaken, and the fact that the tug was sheering towards Brooklyn at the time, coincides with a whistle which indicated such a sheer, but hardly harmonizes with the opening of the exhaust. Can it be doubted that whistle was blown?

XVI.

When the original libel (folio 1) was filed, the libellants did not know of any way in which the Hartford was to blame, and could make no charges against her except the general charges in the sixth article at folio 3. That libel was sworn to on the 2d day of April, at which time Rideout was here (folio 133), and could, and did undoubtedly give all the information he had, and it is submitted that no witness had more information than he had.

Rideout himself swears to the amended libel, on the 5th day of May (fol. 10), and he therein states certain vague and general charges against the Hartford, and says her fault lay "in some or one of these respects" (fol. 8), and then he states that the Hartford and tug each makes charges of negligence against the other, and then adds: "That it is impossible for your libellants to determine between the conflicting claims of said tug and said steamboat" (fol. 9), and this is the reason why he proceeded against both vessels, for it was not necessary for him "to measure exactly the fault of each, and state in what degree each contributed to the said collision, in order to proceed against both vessels or to make both liable." If both vessels were at fault, that an-

swered his purpose, as his counsel well knew, and it was not necessary for him to "measure exactly," (nor indeed inexactly) "the fault of each." And here it may be remarked that it is not always true that he who sees a transaction can better understand it than he who hears it related, for this witness, though an observer of all that occurred, finds it difficult to say how the Hartford was at fault, while the Court below had no difficulty whatever on that subject. And this witness was a libellant who had every motive to throw the fault on the Hartford, as the Unit was not of sufficient value to compensate the loss.

XVII.

The Circuit Court condemns the City of Hartford, because: "when the Unit blew two whistles to indicate her design to go to the westward, the City of Hartford assented to her proposition as a safe and proper one. * * * * * That the City of Hartford ought not to have assented. She ought either to have kept off towards New York or to have stopped." (Fol. 196.)

It will be noticed that this in no way involves the question of evidence, but is wholly a conclusion drawn by the the court from the then positions and courses of the respective vessels.

The question for this Court to consider is: Did the City of Hartford err when she assented to the Unit's proposition as a safe and proper one?

It is clear from the whole testimony, and from the diagrams, that when the Unit blew two whistles the Hartford had time to starboard her helm and clear the tow on a sheer towards the Brooklyn shore. The fact that she could do this justified her officers in believing she could; and they had the right to act upon that belief, in the expectation that the tow would

certainly follow the purpose that her whistles had indicated.

The Hartford cannot be said to be in fault until it first be shown that her sheer to port after the tow's two whistles would have been ineffectual, and that has not been shown. All the testimony of all the witnesses goes to show the opposite.

To concur with the Circuit Court we must assume not only that the Hartford was not bound to follow the tug's whistles, but that she also had no right to shape her course with the expectation that the tug would pursue the course that she had indicated she would take. It is to assume that the Hartford was bound to believe that the tug might at any moment change her course, and therefore she was to stop her way entirely. There is no such law—no such rule of navigation as this.

The only other fault attributed to the Hartford by the Circuit Court is, that she was going too rapidly.

Assuming any amount of rapidity on the part of the Hartford, still it is clear that but for the double blunder of the Unit there would have been no collision.

Is a large passenger steamer bound to assume that another steamer will commit two errors, and will fail even to follow them up: and on that assumption to regulate her speed?

In that strong tide-way the Hartford was bound to have speed enough to subject her to entire management; and there is no proof that she had more.

The Circuit Court does not say what speed on the part of the Hartford would have been justifiable. And when it is proved that before she shut off her steam she was only going eight knots, and afterwards only from three-and-a-half to two knots, and that she was backing at a distance of three hundred feet before the collision; it is difficult to find how it can be said that she was moving too rapidly.

Had the tug obeyed the Hartford, or had she fol-

lowed the indication of her own whistles; or had she not turned in towards the Brooklyn shore, no collision would have happened. Not one of these faults is chargeable upon the Hartford. And she is to be condemned, if condemned at all, because she did not earlier stop or go at a slower rate of speed in anticipation of the fact that the "Unit" would make some one or all of these mistakes.

The digest of the evidence given in these points, and the whole scope of the record show that the "Unit" and the "Abbie S. Oaks" were wholly to blame for the collision, and that in no proper sense can the City of Hartford be visited with the consequences, except upon the ground that, she was bound to know that the tow would constantly commit errors, and that, therefore, by remaining still she should guard against all possible blunders of the other vessel.

This Court will hesitate to establish that rule of navigation.

XVIII.

The law gives the Unit no protection by reason of her being encumbered with her tows.

> "A propeller with a barge in tow is not within the rule which applies to sailing vessels, and which requires steamers to keep out of their way, but a propeller in such a condition when meeting a steamer should keep to the right."
>
> New York Transp. Co. *v.* Philadelphia Steam Nav. Co., 22 How. 461. See also the William Hunter, Holt, 163.

XIX.

As to the question of damages it is respectfully submitted that even if the Hartford is to be condemn-

ed at all, she should not be condemned beyond the one-half placed upon her by the Circuit Court.

It will be difficult to make the ordinary mind understand that the schooner was not liable for the fault of the tug, and that the cargo is not to share the fate and fortune of the schooner.

The tug was agent for the schooner, and the schooner was agent for the cargo. But in addition to this, as we have already shown, the schooner "Oakes" was herself to blame, and the owners of the cargo should look to her rather than to the Hartford.

The Court is referred to the case of Robinson v. The New York Central & H. R.R. Co., 66 N.Y. 11. And it is submitted that the grounds on which a party is responsible for the agent's misconduct, are there correctly and truly stated. And that by no rule of logic can it be shown that under such circumstances, to which these are analogous, should the City of Hartford be made to answer for the misconduct of the tug or that of the schooner.

It is further submitted that it is against public policy to establish a rule of law by which the owner of an almost valueless tug can hire her to vessels at a cheap rate, with the understanding that in case of a collision the entire damages beyond the value of the tug, can be thrown upon the colliding schooner or vessel; because it might appear to the mind of a judge who did not witness the transaction that the other vessel was in some degree at fault.

In this case it is clear that if the Hartford had not been disturbed in either course she had taken, a collision would not have occurred. And if she be held responsible at all it is for the blundering on the part of the tug. Must her owners pay the entire loss beyond the value of the tug?

Such a rule is better calculated to restrain and stifle enterprise than to induce energetic parties to invest money in large undertakings.

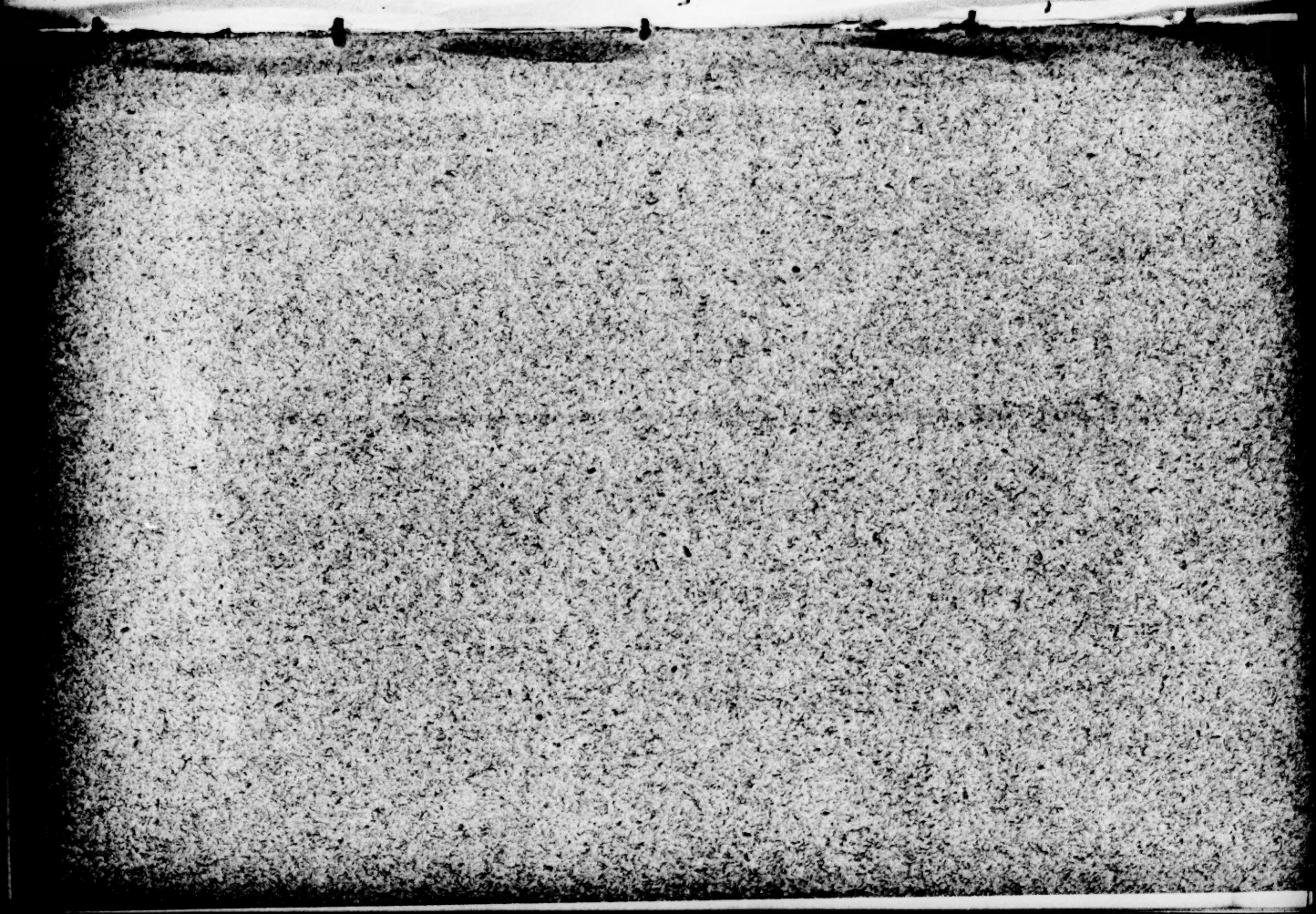
If this rule is to prevail, it would seem that the owners of large and costly vessels take upon themselves all, or nearly all, the burden of a collision or accident.

It is not believed that this Court has established or has intended to establish such a rule of damages, and it is asked to pause before doing so.

XX.

The judgment of the Circuit Court should be reversed and the libels should be dismissed as to the City of Hartford.

RICHARD H. HUNTLEY,
Counsel for the Claimants of the City of Hartford.



EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St. N. Y.

U. S. Supreme Court.

HUDSON S. RIDEOUT AND OTHERS

vs.

THE STEAMBOAT CITY OF HARTFORD AND THE STEAMTUG UNIT.

Points for Libellants—Respondents.

No brief having been filed by the appellants, the respondents submit substantially the same points used by them in the Circuit Court—and having recovered one-half of their damages as adjudged from the tug *Unit*, seek here only an affirmance of the decree below against the *City of Hartford* for the other half.

We claim the facts in respect to the faults of the City of Hartford to be substantially as found by the District Court and fully concurred in by the Circuit Court.

4 Benedict, 568, Case, opinion of Woodruff, J., fol. 192.

I.—No suggestion is made in the pleadings of any of the parties that either of the schooners was guilty of any fault, and, of course, no such question can now be made. If that question were open, however, there is nothing in the proofs to fasten any fault upon either of the schooners. It did, indeed, appear that Captain Strang, of the *Col. Jones*, shifted his helm from starboard to port without orders from the master of the tug; but this was done so close upon the collision as not to have had any appreciable effect upon the movement of the tow, and, besides, was not done until *after* the tow had sternway through the water, and only about half a minute before the collision (fol. 70). This change of the helm, although it might, under sternway, have had a tendency in time to sheer the vessel away from the Brooklyn shore, is actually proved to have had no effect at all on the movement of the tug and schooner. The two vessels were already close together when the order was given by the tug to the schooner to "hard-a-starboard" (fols. 72, 74). And it is obvious that after that they were in the very jaws of the collision, and the effect of any movement or lack of movement on the part of the schooners must have been infinitesimal, altogether too minute for the eye or the law to detect. There was really no time at all after the tug began to back before the collision, and it is not claimed that she got any sternway on through the water. So, if it be claimed that Rideout, the master of the *Oakes*, might, after the tug began to back, have ported his helm instead of keeping it hard-a-starboard until the collision (fol. 73), we make the same reply. There was and could have been no appreciable result one way or the other. Nobody ever thought or suggested through all the controversy in the Circuit and District Courts, of claiming that thereby the *Oakes* contributed to the collision. Besides, the suggestion is inconsistent with the

answer (fol. 41) that the collision occurred "entirely through the fault and negligence of the tug." Upon that pleading both appeals have been taken. The case stands upon it in this court, and a party could not be permitted, even if there was any warrant for it in the evidence, as there is not, to take a new ground inconsistent with his pleading for the first time in this court.

II.—Nor is it anywhere pretended that the collision was attributable to any *inevitable* accident. Such a pretence would be futile indeed. Here was a calm, clear morning. Either of the steam-vessels could have seen or discovered the approach of the other in ample time to have taken the requisite precautions against collision. Neither pretends that her movements were in any degree embarrassed by the presence of other vessels or objects. That a collision should take place under such circumstances is not possible without gross negligence somewhere.

III.—It is entirely plain that one of the most serious embarrassments which impeded the free choice of methods to avoid each other on the part of both the steamboats was the near proximity of the Brooklyn piers; and this circumstance, together with the angular projection of the shore at the place in question, preventing their obtaining that early and distinct view of the course, distance and speed of each other so essential to a proper judgment of the means to be employed to prevent the collision.

We find here unquestionably the first conditions which led to the disaster, *and upon this point both the steam vessels were in fault.*

The Bridgeport, 1 Benedict, 65.
The America, 2 Ib., 475.

1. The fault of the *Unit* stands confessed or proved by the testimony of the witnesses on both sides.

2. The *City of Hartford* has both confessed this to be a fault, and labored to exculpate herself from it, but without success.
Fol. 40.

(*a.*) It stands confessed in her answer that she was over on the Brooklyn side, and where she ought not to be.

(*b.*) Feeling the force of the charge to which she thus subjected herself, she attempts to avoid it, in her answer, by saying that she was compelled to run over to the Brooklyn side in consequence of other vessels being in the middle of the river ahead of her, and that she was endeavoring to *regain* her proper position when she descried the tug. This is a complete confession that she was where she ought not to be.

(*c.*) But it appears, even by her own evidence, that this excuse was a mere pretence. There were no vessels in the middle of the river to embarrass her. She went *voluntarily* to the Brooklyn side, and doubtless to take advantage of the eddy or slack water there (fols. 82, 86, 113).

It was not at all necessary or convenient for her to go to that side to make her landing,

for it was necessary for her to run by her pier, and round her stern in by backing against a stern line. Of course, her way was to run past her pier as nearly parallel with the head of it as possible (fols. 82, 86, 93).

Her captain contrived, in his testimony, a new excuse for his seeking the Brooklyn side, namely: that the tide set him over there (fol.). But it is absurd to suppose that the tide could have had any effect like this which he could not easily have counteracted with his helm, and it does not appear that he made any effort with his helm to keep in the middle (fol. 89, 92).

(*d.*) It is sought to be made out on the part of the *Hartford*, that she was not, after all, so very near to the Brooklyn shore; but the established facts speak unequivocally upon this point. Had the *Hartford* not been quite close in, she would much sooner have made the tow opening out behind the point. Besides, the spot of the collision was confessedly not more than 300 feet from the piers, and was in fact, probably considerably nearer, and the weight of the evidence is clearly to the effect that the *Hartford*, by porting when she rang her first bell, made quite as much space out into the river as she subsequently made in shore by her starboarding. We are justified therefore, in the conclusion that she had been running along the Brooklyn shore quite as near as the place of the collision.

(Fols. 73, 76, 82, 83, 86, 87, 89, 93, 109).

IV.—The next circumstance which led to the collision was also a fault chargeable against each of the steam vessels. Amid all the confusion and contradiction in the testimony concerning the courses and the speed of the steamers, and the times when they descried each other, and what the one did, and what the other did, it stands out clear and indisputable that both these steamers, running upon intersecting lines, proceeded with unabated speed, and substantially unchanged directions, until they were within such proximity of each other as to incur great hazard of a collision, even under the best management, and to make a collision nearly certain in the event of the slightest mishap or miscalculation.

The *D. S. Gregory*, 2 Benedict, 226.

1. The distance between the *City of Hartford* and the tow, at the time of the giving and answering the signal of two whistles is put by the *City of Hartford* in her answer at 900 feet. The testimony taken together tends rather to diminish than increase this distance. Up to this time it is not pretended that either party had taken the precaution of slackening speed (fol. 40).

2. Up to this time the speed of the *City of Hartford* was, by her own testimony, her usual rate, fifteen revolutions a minute, and about twelve miles an hour *through the water*, and by the land, subtracting the force of the tide, good eight miles an hour (fols. 87, 90, 93, 105). The tug was going *through the water* two or three miles an hour, and, adding the force of the tide, about six miles an hour (fol. 105). The vessels were thus approaching each other at the rate of fourteen miles an hour, and would therefore run the intervening distance in something less than *one* minute.

3. They were then on intersecting lines, and the tow bore a trifle on the port bow of the *City of Hartford*. (See Nelson's testimony, fols. 90, 94, 100, 103). A collision was manifestly among the near probabilities unless suitable means should be at once adopted to avoid it. If nothing was done except to change the courses of the respective vessels the danger of collision might be lessened; but would certainly not be removed. The success of that manœuvre would so far depend upon the promptitude with which the vessels would answer their respective helms, the influence of the tide (very uncertain in that place), and other circumstances, as to make it a very precarious reliance; and it is particularly to be noticed here that the *City of Hartford* was, by the confession of her own witnesses, under a sheer produced by her port helm which it was necessary for her to overcome in order to obey the suggestion of the two whistle signal (fols. 90, 100, 101, 103). What *prudence* required is manifest—namely, for both vessels to stop at once, not simply to slacken speed, but to *stop*.

4. It is not pretended that the *Unit* made any effort even to stop or check her speed, until she had run so much further as to diminish the distance probably one-half, and the collision became substantially unavoidable.

5. Allowing the *City of Hartford* the benefit of her own claim, she rang her bell to *slow* only, a manœuvre which has very little *immediate* effect in diminishing the speed of such a boat. And, by her own showing, it was not until the intervening distance had diminished to about 500 feet that she rang to stop and back; and not until she had heard, as she claims, another

signal of a single bell from the tug. This is all that she pretends to have done, and it is manifest, upon this statement that this stopping and backing was not resorted to until the collision was so immiuent as to make the resort wholly ineffectual.

See Capt. Dibble's testimony, fols. 90, 94, 99, 100, 101, 103.

6. But we have given her the benefit of her own claim. She is by no means entitled to so much. It is testified to by a number of witnesses, so numerous and so respectable as to command belief, that she came on with speed *apparently* undiminished, and her wheels turning ahead until she was almost upon the tow; and this testimony, together with the undisputed force of the blow, make it substantially certain that she did not stop and back until she was much nearer to the tow than 300 feet. That such conduct, under such circumstances, is a compliance with *any* rule of prudence or caution cannot be maintained.

The *D. S. Gregory*, *supra*.

Art. 16, Steering and Sailing rules, fols. 73, 74, 79, 80, 82, 84, 106, 110, 117, 125.

The *Galatea*, 94 U. S., 439.

V.—The next fault we charge is one which falls upon the *City of Hartford* alone. Upon the assumption that the case is an *ordinary* one under the steering and sailing rules, and not a *special case* under Art. 19, it was the right and duty of the tug, she having the *City of Hartford* on her starboard hand, to take the initiative as to the method to be pursued to avoid the collision, and it was the duty of the *City of Hartford* to permit this. And yet the

City of Hartford assumed to herself this prerogative, and blew a single whistle, and ported her helm at the same time.

The *D. S. Gregory, supra.*

1. That the fact is as above stated cannot be questioned. It stands upon the testimony of the *City of Hartford's* own witnesses.

   See Testimony of Dibble and Young, (fols. 89, 100.)

2. That it was a most *material fault* under the circumstances is clear. True, the *Unit* did not hear this whistle; but the result was, that, at the time the *Unit* blew her two whistles, the *City of Hahtford* was on a sheer toward the middle of the river under a port helm, which the *Unit* could not perceive with the eye, and had no other means of knowing. It was this very sheer which the *City of Hartford* was obliged to overcome in order to obey the suggestion of the two-whistle signal when it came; and it was this, doubtless, which made it difficult for the *City of Hartford* to promptly make it appear to the *Unit* that she had changed her course to the Brooklyn shore.

3. The palpable effect on the part of those having charge of the defense of the *City of Hartford*, both in their answer and by the testimony of Capt. Dibble, serves to mark their own sense of the indefensible blunder which was here committed.

4. It was this sheering, first one way and then another, by the *City of Hartford*, manœuvres which just neutralized each other, which led to the same result substantially as if she had not changed her course at all; and justifies the

testimony of so many witnesses on board the tug and tow that she came directly down upon them without any *apparent* change at all in her course.

Fols. 69, 70, 73, 75, 105, 124.

5. The claim made by the *City of Hartford* on the argument in this court, that she was already on a port-helm, and on a sheer across the river, when she blew her one whistle, is contrary to the evidence. It is, on the contrary, clearly proved that before giving that signal she was running down about parallel with the Brooklyn shore; that she blew that whistle because she saw the tow, and as a signal to it, and *then* put her wheel hard-a-port. *Captain Dibble*, who blew that whistle, so states positively (fol. 89).

Strickland swears that until that whistle was blown they made no change, but were running along by the Brooklyn piers, as they had straightened down at Bridge street (fol. 94).

Young states that that whistle was blown *on discovering the tow:* that up to that time they were heading a little off the Brooklyn shore, and that they followed up the one whistle signal by putting their wheel hard-a-port, as far as it would go to port (fol. 100).

Nelson says (fol. 103), that after blowing the one whistle Capt. Dibble himself took hold of the wheel, and they tried to get further to port, to go over to Peck Slip; hove it up to six or seven spokes in all to port.

VI.—The next fault we note is kindred to the one charged in the fourth point upon both vessels. We charge it here as a fault in a peculiar manner resting upon the *City of Hartford*. The tug had the right to take the initiative. She did take it by blowing the two whistles. This indicated to the *City of Hartford* two things: 1st. That the tug was going ahead; and 2d. That she was going to cross the bows of the *City of Hartford*. This was an indication on the part of the tug that she deemed that manœuvre practicable and safe. The *City of Hartford* acquiesced in that view by the answer she gave. Beyond all question, it became the immediate duty of the *City of Hartford* to take every step on her part, consistent with the one the tug had proposed, to make the manœuvre practicable and safe; and, as we have already seen, it was in the highest degree probable that a collision would come unless one or both of the vessels *at that time stopped*. Now, the *City of Hartford* having assented to the tug's going ahead, was absolutely bound to stop herself forthwith.

1. Of course the tug could not know how easily the *City of Hartford* could be handled, or how soon she could stop or change her course. Those on board the *City of Hartford* were the judges of that.

   Moreover, the tug did not then know what we now know, that the *City of Hartford* was under a port wheel, and sheering to starboard.

   The porting of the wheel could not, of course, be perceived by the eye on board the *Unit*, and the consequent sheer to starboard would not easily be perceptible. If the *Unit*, when she gave her two-whistle signal, had known that the *City of Hartford* was sheering under a port wheel, she would have also known that the manœuvre of crossing the bows of the latter was much more difficult than she supposed, and *non*

constat that she would have adopted that manœuvre. Now, it is certainly clear that *she had the right to act on the presumption* that the *City of Hartford* had not, of her own motion, and without asking the assent of the *Unit*, taken any steps in the way of changing her course in order to avoid the collision. The law distinctly gave the initiative to the *Unit*.

2. It is not true, as claimed by the counsel for the *City of Hartford* in the Circuit Court, that there was any delay on the part of the *Unit* and the tows in starboarding after the signal of two whistles had been given and accepted. They were not bound, and it would not have been proper for them to starboard until that signal had been answered and accepted, and the proof is that then they did so immediately (fols. 105, 69, 72, 74).

Strong came on deck when the *Unit* first whistled; took his wheel immediately and found that his man had already put it to starboard before he came on deck (fols. 68, 69).

Rideout says that he promptly obeyed the order to starboard, and when at fol. 74 he speaks of part of the space between the steamer and tug having lessened, he obviously refers to the distance he had just before spoken of when they first came in sight of the steamer.

VII.—We have thus far treated the case as an *ordinary* one under the steering and sailing rules. If there be anything in the facts to make a *special case* under the last rule, that is to say, if it be one to which the steering and sailing rules are not to

be rigidly applied, the case is still worse for the *City of Hartford.*

1. The single circumstance which possesses any force to take the case out of the ordinary class and make it special is, that the tug with her tow was under obvious disadvantages as compared with the *City of Hartford.* She was heavily encumbered; could control herself much less easily, and was in some degree at the mercy of a powerful tide, which was sweeping her towards the *City of Hartford.* The latter was free from these disadvantages, and held in her hands much more completely than the tug, a control over the chances of the situation. It does seem to be true that the steering and sailing rule, applicable to the case where two steamers are crossing each other's courses, proceeds upon the supposition that the respective vessels stand upon an equality, or, at all events, that there is no gross inequality between them.

2. Of course, it follows, that, if owing to the circumstance above stated, the case is a *special* one, it became the duty of each party to do, without regard to the rules, what under the circumstances was best, and this duty rested upon the *City of Hartford* with increased force proportionate to her superior control over the situation. It would follow, with entire certainty, under this aspect of the case, that if there was the slightest danger of a collision after the two-whistle signal was given, the *City of Hartford* should have instantly stopped and backed. The same circumstance which makes the case a *special* one substantially imposes upon the *City of Hartford* the responsibility of taking the steps requisite to avoid the collision.

VIII.—The whole drift of the argument on the part of the *City of Hartford*, in this court, is rather by way of apology for the faults she committed, which contributed to the collision, than to acquit her of having committed those faults. It is that, notwithstanding her being out of position and too near the Brooklyn shore, and in spite of her excessive speed, and of her blunder in changing her course by porting, and then of not stopping short after she had assented to the tug's going to port, still that the collision might possibly not have happened if the tug and tows had a-starboarded a second or two sooner than they did, and then had not stopped and backed when in the jaws of the collision, but had kept on.

But the rights of the libellants are not to be determined by mere possibilities, or measured by close shaves. The steamer which took the responsibility of navigating, in the critical position in which they were from the first, upon such nice and delicate calculations of chances, must bear the burden that ensued upon this failure.

IX.—The *City of Hartford* cannot be permitted to allege that the two-whistle manœuvre was an error.

1. She acquiesced in it at the time voluntarily and under no compulsion.

2. There is no issue upon this point. She does not charge this as an error in her answer, but proceeds upon the assumption that it was a correct manœuvre.

X.—This two-whistle manœuvre was a correct one, in fact, assuming that either of the two vessels was to keep under headway.

1. We have already, under our fourth point, taken the ground, to which, of course, we adhere, that the safer expedient under the circumstances was for both vessels to have stopped, and then proceeded upon some course afterwards to be agreed upon. But it is, nevertheless, true that all danger of a collision would have been avoided, provided either of the vessels possessed the power to stop speedily, and had stopped, leaving the other to go ahead. The difficulty is that there is no signal intimating that one steamer is to take a particular course and the other to stop. Now, the *Unit* gave a signal which imported two things—first, that she was going ahead; second, that she was going to the left. If she was to go ahead *at all*, it is manifest that this was her course. It is clear upon the statements of the pilots of steamers who were examined that this was the proper and usual course for a tug encumbered with a tow proceeding up the river on the top of a flood tide. To have attempted to go inside the *City of Hartford* at that spot would have brought her heavily encumbered within the influence of the eddy at that point, and she would have run the hazard of being thrown upon the piers on the Brooklyn shore. Her movement, therefore, assuming that she was to keep moving, was correct.

Fols. 109, 113.

2. Now the *City of Hartford* knew, or was bound to know, this, and she knew that the *Unit* designed to keep on, and she acquiesced in it. The *other* condition to the safety of this proceeding it devolved upon her to fulfil, and by

her acquiescence she is to be deemed as having undertaken to fulfil it. She was bound to stop.

XI.—It was insisted upon by the counsel for the *City of Hartford*, upon the argument, that all would have been well had the *Unit* kept on and not stopped. We think just the contrary, and that the collision under those circumstance would have been with the *Col. Jones*. But is it necessary to argue that when a collision is imminent, the course most full of danger, and which most calls for the reproof of a court of admiralty, is the pressing on at full headway under the belief or hope that perchance one may just graze by, and thus avoid a collision?

XII.—The District Court and the Circuit Court, having, upon full hearing and upon the same proofs, concurred in the decision that the *City of Hartford* was in fault, and that such fault contributed to the collision, this court will not reverse the decree unless plain error is shown requiring a reversal, which does not here appear.

The *Juniata*, 93 U. S., 337.
The *Hyppodrome* 6 Wall, 216.
The *Grace Girdler*, 7 Wall, 204.
The *Quickstep*, 9 Wall, 665.
The *Spray*, 12 Wall, 266.
The *Commerce*, 16 Wall, 33

Lastly—There should be a decree affirming the judgment of the Circuit Court that the tug and the steamer were both in fault, and that the *City of Hartford* pay to these libellants the one half the damages awarded against her in that court.

The *Alabama and the Gamecock*, 92 U. S., 695.
The *Atlas*, 93 U. S., 602.
The *Juniata*, Ibid. 337.

JOSEPH H. CHOATE,
Of Counsel for Rideout *et al.*,
Respondents.

Points upon Exception to Commissioner's Report in case of Rideout and others.

The exception to the allowance by the commissioner of six hundred dollars, as the additional outlay which would have been necessary in order to complete the repairs to the schooner, and restore her to as good condition as that in which she was before the collision, was properly overruled by the court below.

It is to be observed that this allowance was not made for depreciation or diminution in value, but for the additional expenditures (above what was incurred for the repairs *actually made*) which would have been incurred in *fully repairing* all the damages to the schooner occasioned by the collision.

Restitutio in integrum is the undisputed measure of damages. The owners of the injured vessel have the right to recover from the vessel in fault an amount which would be sufficient to repair fully all the injuries to their vessel occasioned by the collision.

The amount to be recovered can be neither increased nor diminished by repairing the vessel, or leaving her unrepaired. It is determined by the condition of the innocent vessel after the disaster. It is not dependent or conditioned upon the actual making of the repairs.

The Circuit court has distinctly enunciated the rule in the case of *The Favorita* (8 *Blatch.*, 542) as follows:

"The owner of the injured vessel may recover "the cost of repairing her. If the cost of repairs "can be clearly and reliably shown, he may have "such recovery, *whether the repairs have been* "*actually made or not.* In the present case, one "thousand dollars was allowed for damages not "fully repaired. The proof shows that it would "cost at least that sum to make the repairs com- "plete. This was properly allowed."

In the case of *The Blossom* (Olcott, 188), the actual repairs having cost but a trifling sum, the ship's carpenter testified that the schooner could not be replaced in a condition as good as before the injury without taking up her deck, and taking out the knees, &c. Judge Betts, after stating the principle of *restitutio in integrum*, and that the repairs made did not place her in the sound condition in which she was before the injury, made a further allowance for the estimated cost of taking up the deck and replacing the knees, &c., and gave leave to the parties, if dissatisfied with his estimate, to take a reference in order to prove what would be the cost of such repairs.

In the present case, the commissioner and the court below followed these authorities, and finding that the cost which would have been incurred in fully repairing the injuries to the schooner was fifteen hundred and thirty-five dollars, have allowed that sum in two items, to wit, $935 for repairs actually made, and $600 for the additional expenses which would have been incurred if the repairs had been completed.

The conclusions of the commissioner are fully sustained by the undisputed evidence of the master of the schooner, and of the shipwright who repaired her.

Captain Rideout testifies: "She received injuries which were not repaired, her rail and her starboard side broken, and timber heads on starboard side broken, sails and rigging badly chafed; one side of her was started one and a-half inches—port side; she was not as good after these repairs as before the collision, on account of strains, chafe, and damage of sail and rigging, broken rails, timber heads, and loss of chain not replaced. All these could have been made good at a greater expense.

Fol. 135.

The *shipwright* testifies as follows:

"Q. How much would it have cost for repairs if the vessel had been put in as good condition as at the time of the collision?

"A. My judgment is from $1,500 to $1,600.

"Q. You have stated, in your testimony, that in order to have made the vessel as good as she was at the time of the collision it would have been necessary to have torn to pieces the wood work which was a little strained, and replace it with new work, and that that would have cost from $600 to $1,000; was that work actually done?

"A. No."

(See fols. .)

We submit that it was only by the allowance of this sum that the actual damages of the libellants, as proved by the undisputed evidence in the case, could

be properly compensated; and that such an allowance is fully sustained by all the authorities upon the subject.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Rideout and others,
Libellants and Respondents.

In the Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1877.

No. 186.

THE STEAMBOAT CITY OF HARTFORD, HER TACKLE, &C.
THE HARTFORD & NEW YORK STEAMBOAT COMPANY,
Claimants, Appellants,

vs.

CHARLES ROBINSON.

No. 212.

CHARLES ROBINSON, *Appellant.*

vs.

THE HARTFORD & NEW YORK STEAMBOAT COMPANY
CLAIMANTS OF THE STEAMBOAT CITY OF HARTFORD.

CROSS APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR CHARLES ROBINSON,

Appellant and Appellee.

HENRY J. SCUDDER,
Of Counsel for ROBINSON, *Appellant and Appellee.*

NEW YORK:
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The Steamboat CITY OF HARTFORD, her Tackle, &c. THE HARTFORD AND NEW YORK STEAMBOAT COMPANY, Claimants, Appellants.

vs.

CHARLES ROBINSON.

CHARLES ROBINSON, Appellant,

vs.

THE HARTFORD AND NEW YORK STEAMBOAT COMPANY, Claimants of the Steamboat CITY OF HARTFORD.

Brief and Points on behalf of Charles Robinson, Libellant, Appellant and Appellee.

These are cross-appeals from the decree of the Circuit Court for the Southern District of New York, and the following is a statement of facts:

Charles Robinson, Appellant and Appellee, as aforesaid; but hereafter, for brevity, styled libellant, was, on the 27th of March, 1869, owner of a cargo of corn, laden on the schooner Abbie S. Oakes. This schooner was, at six o'clock in the morning of that day taken in tow, in Buttermilk Channel, in the harbor of New York, by the steam-tug

Unit, to be towed eastward through Hellgate. The tug, at about the same time, took another schooner in tow. The schooner Oakes was fastened on the port side of the tug, the other schooner on her starboard side. Both were securely fastened (pp. 34, 36, 37 and 52 of Record).

The tide ran flood, and so continued until after collision, at the rate of 4 knots (p. 44), causing an eddy on the Brooklyn side, at Marston and Powers' Stores, and again higher up (p 57).

The Unit was in charge of Thomas H. Kiley, pilot (p. 52), and proceeded on her course, with her tow, in a N. Easterly direction until, when about abreast of Fulton Ferry, she made the steamboat City of Hartford coming toward her, *but on her starboard hand* (pp. 46, 48, 49, 54, diagram 4).

The City of Hartford made the *starboard side* of the tow when their hull first came into view (pp. 49, 50, *et supra*).

The City of Hartford was 280 feet long (p. 46), was running against the tide at the rate of 8 knots an hour (p. 42).

At Fulton Ferry, the shore on the Brooklyn side projects out into the river like a point, and here the tug was about 150 yards from the pier.

When the vessels first made each other they were, according to the testimony of the City of Hartford, 1,000 to 1,700 feet apart (p. 48).

At this time they were heading on courses that would intersect, the Unit holding the City of Hartford on the starboard side. The City of Hartford claims then to have been under a port wheel and to have blown one whistle. The pilot of the Unit failed to hear this or to connect it with the opposite vessel, and when the latter opened upon him he blew two whistles, to indicate his intention to pass the steamer on his and her starboard side, and put his own and ordered the schooners to put their wheels to starboard. This signal was answered by two whistles from the City of Hartford, and the

latter then shut off her steam. At this time the vessels were distant from each other 900 feet, as stated in answer of City of Hartford, but less as derived from general testimony.

The Unit then shut off and backed, but the steamer continued headway, and struck the schooner Oakes and sunk her with libellants cargo in her.

The owner of the schooner Oakes libelled the steamer and tug in the District Court of the Southern District of New York. Robinson, libellant, libelled the two also in same Court.

The tug Unit was appraised as to value at the sum of $3000. (p 9.)

Upon the hearing in the District Court, a decree was entered in favor of each libellant against the City of Hartford and in favor of the tug Unit. Appeal being taken to the Circuit Court by the City of Hartford, this decree was modified, both vessels were found in fault, and as to the libellant, Robinson, a decree made that he recover from the Steamboat City of Hartford but one-half of the damages sustained by him.

By the decrees of the District Court the City of Hartford was held liable for the libellant's cargo to the amount of $3,855.90 (p 85,) and for the schooner Oakes to Ridout, the other libellant, to the amount of $4,409.52. (p 85.)

The decree of the Circuit Court divided each of these sums as against the two vessels, thus limiting the liability of the City of Hartford, to half the amount of damage in each case.

The tug being appraised at only $3,000 the decrees of the Circuit Court leaves the libellant largely remediless, where both the lower Courts have found the City of Hartford at fault, and she is able to make good the damage occasioned by her mismanagement.

To secure relief the libellant Robinson appealed from so much of the decree of the Circuit Court as

directed, that he should recover of the City of Hartford one-half only of the damages he had sustained by the collision.

POINTS.

I.—No suggestion is made in any of the pleadings that either of the schooners was at fault, and of course no such question can now be made, nor if made is there the slightest evidence to show that either contributed to the disaster.

II.—Nor is it anywhere pretended that the collision was attributable to any *inevitable* accident. Such a pretence would be futile indeed. Here was a calm, clear morning. Either of the steam-vessels could have seen or discovered the approach of the other in ample time to have taken the requisite precautions against collision. Neither pretends that her movements were in any degree embarrassed by the presence of other vessels or objects. That a collision should take place under such circumstances is not possible without gross negligence somewhere.

III.—The collision was the result of fault on the part of both the City of Hartford and the Unit, but chiefly of the former.

1. The Unit, upon the testimony of her pilot, made the City of Hartford nearly

a mile off, and knew her and knew where she landed. She saw her cross the river into the bend, and was therefore charged with knowledge of what her subsequent movements must be to reach her landing place. When, therefore, the Unit became aware that this great steamer, moving at a rapid rate of speed, was running toward her around the point at Fulton Ferry, and was near the Brooklyn shore and out of the centre of the channel, it was her plain duty to have slowed before she adopted a plan of navigation, in order to better determine, when the steamer came into full view, and her manœuvres could be correctly ascertained, what might be the best plan.

This obligation on the Unit was increased by the fact that she was encumbered by two vessels, each larger than herself, and was running with a 4 knot tide, so that her capacity for quick and certain self-control was greatly inferior to that of the City of Hartford.

2. In the respect of speed, however, as well as other conditions, the fault of the City of Hartford was far greater than that of the Unit. She was powerful and unincumbered, was running against the tide, and could quickly control her movements.

She had elected to abandon the broad open channel, without cause, and steal swiftly along the shore toward a projection that might shut out any small vessels—indeed she made the masts of the schooners before the tug—and, heedless of the

possibility of encountering one if it should be running toward her.

She made the starboard broadside of the tug, and therefore knew the latter had the right to direct the navigation; yet, in defiance of the rule, attempted to direct it herself.

After first dictating a course, and entering upon it, she complies with the signalled direction of the tug, changing the course first adopted, and runs until within almost her length of the tug before ringing to stop (p. 46).

Of course, disaster will follow such imprudence.

The Bridgeport, 1 Ben., 65.

IV.—The Unit had the right to dictate a course. The City of Hartford was on her starboard hand and plainly saw the starboard side of the tow, and hence bound by the rules should have instantly stopped, when she perceived that the course chosen by the Unit might lead to danger.

The Unit could not know the porting on the City of Hartford, and the wheelmen of the latter should reasonably be held to a knowledge of her inability to know it, hence with the full consciousness of an inaugurated manœuvre on their part unknown to the tug, and followed by action on the part of the tug that seemed to the City of Hartford to hazard collision, the latter should have instantly stopped and backed, or indicated by appropriate signals the danger she

deemed imminent. Failing in this she was clearly culpable. The duty of the City of Hartford was enforced by the condition of the tide. 19th Rule.

19th Ruie.
The Galatea, 92 U. S. Rep., 446.

V.—Another grave fault of the City of Hartford lies in her position. She was out of the channel and out of her regular course and that without any sufficient reason.

Her landing place was upon the opposite side of the river, and no obstruction in the channel prevented her following its main course, yet she suffered herself to be *lee bowed* over to the Brooklyn shore and in a bend.

The pretence that the tide occasioned this, is shallow and undeserving argument. Her power could stem the tide and make 8 knots against it, and in abandoning the fair way, with security, for a margin of eddying water where an intervening headland excluded her manœuvers from the observation of vessels on the other side of the projection, charges her with the disaster that followed.

The Favorita, 18 Wall, 602.

VI.—The City of Hartford cannot complain of the tug's signal as an error, for she accepted it as correct by complying with it, and her answer approves it.

She could have indicated her disapprobation by other signals, or better, have stopped and backed at once if she considered it an error.

The latter course would have unquestionably prevented the collision.

VII.—The tug's two-blast signal was, in fact, correct, assuming that either of the vessels was to keep under headway.

The tug being heavily encumbered by her tow and running on the top of a flood tide, within the influence of an eddy, would clearly have endangered herself and her charge by attempting to go inside the other vessel.

This the City of Hartford was bound to know and did know, and hence her aquiescence, by her response of two blasts.

The City of Hartford was equally bound to fulfill the duty imposed upon her, by this situation of the Unit, and stop at once, and if need be, back.

VIII.—The Courts below concurred in finding the City of Hartford in fault, but the Circuit Court attached blame to the Unit also. By the decree of the latter Court the recovery of the libellant, Robinson, against the City of Hartford, was limited to one-half his damages, and he will, therefore, fail to be compensated under the provisions of this decree, and there remains

for consideration the question what are his rights in the premises. See Statement of facts, *supra.*

Opinion of Blatchford, *J.*, 4 Ben., 568.
" Woodruff, *J.*, p. 98 of Record.

IX.—The libellant, Robinson, was in no way interested either in the tug, steamer or schooners.

He was an innocent owner of cargo on board the Oakes, one of the tow, and in nowise contributed or had the power to contribute to the collision.

He is entitled, therefore, to be made good to the extent of his loss, by both or either of the vessels causing that loss.

These propositions are now too well established to suffer argument in their support.

The Atlas, 93 U. S. Rep., 302, p. 318.
The Juniata, 93 U. S. Rep., 337.

X.—So much of the decree of the Circuit Court as directs that the libellant and appellant, Robinson, recover but half of the damages chargeable against the steamboat City of Hartford, should be reversed, and the decree so modified that this appellant recover against said steamboat City of Hartford, her tackle, apparel and furniture the amount of damages sustained by him as decreed, with interest and costs.

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Appellant and Appellee.